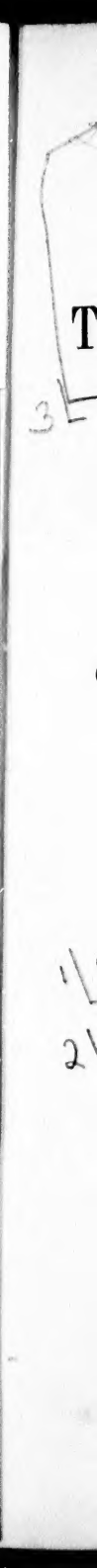

PAPERS

RELATING TO

THE TREATY OF WASHINGTON.

VOLUME I.—GENEVA ARBITRATION.

CONTAINING THE CASE OF THE UNITED STATES; THE CASE OF GREAT BRITAIN; THE COUNTER CASE OF THE UNITED STATES; AND A PORTION OF THE ADDITIONAL DOCUMENTS, CORRESPONDENCE, AND EVIDENCE WHICH ACCOMPANIED THE SAME.

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THE CASE

OF

THE UNITED STATES,

LAID BEFORE THE

TRIBUNAL OF ARBITRATION,

CONVENED AT GENEVA,

UNDER THE PROVISIONS OF THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND HER MAJESTY THE QUEEN OF GREAT BRITAIN, CONCLUDED AT WASHINGTON, MAY 8, 1871.

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[9] *CASE OF THE UNITED STATES.

PART I.

INTRODUCTION.

In the spring of the present year (1871) five Commissioners on the part of Great Britain and five Commissioners on the part of the United States of America met at Washington in a body, which, when organized, was known as the Joint High Commission, in order to discuss, and, if possible, to arrange for, the adjustment of several causes of difference between the two Powers.

Meeting of the Joint High Commissioners at Washington.

Among the subjects which were brought before that body by the United States were "the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels, which have given rise to the claims generically known as the Alabama Claims."[1]

The sessions of the Joint High Commission were many in number, and were largely devoted to the consideration of the differences referred to in Mr. Fish's letter to Sir Edward Thornton, from
[10] *which the above-cited quotation is made. The High Commissioners, in the protocol of their thirty-sixth conference, caused to be recorded a statement of their negotiations on this subject, in the following language:

Protocol of the conferences as to the Alabama Claims.

"At the conference held on the 8th of March the American Commissioners stated that the people and Government of the United States felt that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent rebellion in the United States; that what had occurred in Great Britain and her colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain; that the history of the Alabama and other cruisers, which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels, with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers, and in direct injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in
[11] *the addition of a large sum to the cost of the war and the suppression of the rebellion; and also showed that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly liable for the acts of those cruisers and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions

[1] Mr. Fish to Sir Edward Thornton, January 30, 1871, Vol. VI, page 16.

of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; that the cost to which the Government had been put in the pursuit of cruisers could easily be ascertained by certificates of Government accounting officers; that, in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account in the event of no such settlement being made.

"The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon.

*"The British Commissioners replied that Her Majesty's Gov- [12]
ernment could not admit that Great Britain had failed to discharge toward the United States the duties imposed on her by the rules of International Law, or that she was justly liable to make good to the United States the losses occasioned by the acts of the cruisers to which the American Commissioners had referred. They reminded the American Commissioners that several vessels, suspected of being designed to cruise against the United States, including two iron-clads, had been arrested or detained by the British Government, and that that Government had, in some instances, not confined itself to the discharge of international obligations, however widely construed, as, for instance, when it acquired, at a great cost to the country, the control of the Anglo-Chinese Flotilla, which, it was apprehended, might be used against the United States.

"They added that, although Great Britain had, from the beginning, disavowed any responsibility for the acts of the Alabama and the other vessels, she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, provided that a fitting Arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. *They would, therefore, ab- [13]
stain from replying in detail to the statement of the American Commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

"The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon.

"The British Commissioners replied that they had no authority to agree to a submission of these claims to an Arbitrator with instructions as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future; but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to the Arbitrator, and leave him free to decide upon them after hearing such arguments as might be necessary.

"The American Commissioners replied that they *were willing [14]

to consider what principles should be laid down for observance in similar cases in future, with the understanding that any principles that should be agreed upon should be held to be applicable to the facts in respect to the Alabama Claims.

"The British Commissioners replied that they could not admit that there had been any violation of existing principles of International Law, and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the Arbitrator, but that they would make known to their Government the views of the American Commissioners on the subject.

"At the respective conferences on March 9, March 10, March 13, March 14, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the Arbitrator and laid down for observance by the two Governments in future.

"At the close of the conference of the 14th of March, the British Commissioners reserved several questions for the consideration of their Government.

"At the conference on the 5th of April, the British Commissioners stated that they were instructed by Her Majesty's Government
[15] to declare *that Her Majesty's Government could not assent to the proposed rules as a statement of principles of International Law which were in force at the time when the Alabama Claims arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that, in deciding the questions between the two countries arising out of those claims, the Arbitrator should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the rules which the American Commissioners had proposed, viz:

"'That a neutral Government is bound,

"'First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"'Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the
[16] other, or for *the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"'Thirdly, to exercise due diligence in its own ports or waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.'

"It being a condition of this undertaking that these obligations should in future be held to be binding internationally between the two countries.

"It was also settled that, in deciding the matters submitted to him, the Arbitrator should be governed by the foregoing rules, which had been agreed upon as rules to be taken as applicable to the case, and by such principles of International Law, not inconsistent therewith, as the Arbitrator should determine to have been applicable to the case.

"The Joint High Commission then proceeded to consider the form of submission and the manner of constituting a Tribunal of Arbitration.

"At the conferences on the 6th, 8th, 9th, 10th, and 12th of April the

Joint High Commission considered and discussed the form of submission, the manner of the award, and the mode of selecting the Arbitrators.

"The American Commissioners, referring to the hope which they had expressed on the 8th of *March, inquired whether the [17] British Commissioners were prepared to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion; and the British Commissioners replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels.

"The American Commissioners accepted this expression of regret as very satisfactory to them and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States.

"In the conference on the 13th of April the Treaty, Articles I to XI, were agreed to."

The Treaty referred to in this statement was signed at Washington on the 8th day of May, 1871, and the ratifications thereof were exchanged at London on the 17th day of the following June. The articles which relate to this subject are the following:

The Treaty of Washington.

"ARTICLE I.

"Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, *growing out of the acts committed by the several [18] vessels which have given rise to the claims generically known as the 'Alabama Claims;'

"And whereas Her Britannic Majesty has authorized Her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels:

"Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the 'Alabama Claims,' shall be referred to a Tribunal of Arbitration, to be composed of five Arbitrators, to be appointed in the following manner, that is to say: One shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.

*"In case of the death, absence, or incapacity to serve of any [19] or either of the said Arbitrators, or in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, the President of the United States, or Her Britannic Majesty, or His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, as the case may be, may forthwith name another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such Head of a State.

"And in the event of the refusal or omission for two months after receipt of the request from either of the High Contracting Parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator, either to fill the original appointment, or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline, or from any cause cease to act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators.

"ARTICLE II.

"The Arbitrators shall meet at Geneva, in Switzerland, at the
[20] earliest convenient day after *they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of the United States and Her Britannic Majesty, respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

"Each of the High Contracting Parties shall also name one person to attend the Tribunal as its agent to represent it generally in all matters connected with the arbitration.

"ARTICLE III.

"The written or printed case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the agent of the other Party as soon as may be after the organization of the Tribunal, but within a period not exceeding six months from the date of the exchange of the ratifications of this Treaty.

"ARTICLE IV.

"Within four months after the delivery on both sides of the written or printed case, either Party may, in like manner, deliver in duplicate to each
[21] *of the said Arbitrators, and to the agent of the other Party, a counter-case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence so presented by the other Party.

"The Arbitrators may, however, extend the time for delivering such counter-case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

"If in the case submitted to the Arbitrators either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrators may require.

"ARTICLE V.

"It shall be the duty of the agent of each Party, within two months after the expiration of the time limited for the delivery of the

counter-case on both sides, to deliver in duplicate to each of *the [22]
said Arbitrators and to the agent of the other Party a written or printed argument, showing the points and referring to the evidence upon which his Government relies; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by counsel upon it; but in such case the other Party shall be entitled to reply either orally or in writing, as the case may be.

"ARTICLE VI.

"In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of International Law, not inconsistent therewith, as the Arbitrators shall determine to have been applicable to the case:

RULES.

"A neutral Government is bound—

"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and *also to use like diligence [23]
to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

"Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of International Law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's *Government had undertaken to act upon the principles set forth [24]
in these rules.

"And the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them.

"ARTICLE VII.

"The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

"It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

"The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfill any of the duties set forth in the foregoing three rules, or recognized by the principles of International Law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfill any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in
[25] coin by the Government of Great Britain to the Government *of the United States, at Washington, within twelve months after the date of the award.

"The award shall be in duplicate, one copy whereof shall be delivered to the agent of the United States for his Government, and the other copy shall be delivered to the agent of Great Britain for his Government.

"ARTICLE VIII.

"Each Government shall pay its own agent and provide for the proper remuneration of the counsel employed by it and of the Arbitrator appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the arbitration shall be defrayed by the two Governments in equal moieties.

"ARTICLE IX.

"The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

"ARTICLE X.

"In case the Tribunal finds that Great Britain has failed to fulfill any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors
[26] shall be appointed to ascertain and determine what *claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure, as to each vessel, according to the extent of such liability as decided by the Arbitrators.

"The Board of Assessors shall be constituted as follows: One member thereof shall be named by the President of the United States, one member thereof shall be named by Her Britannic Majesty, and one member thereof shall be named by the Representative at Washington of His Majesty the King of Italy; and in case of a vacancy happening from any cause, it shall be filled in the same manner in which the original appointment was made.

"As soon as possible after such nominations the Board of Assessors shall be organized in Washington, with power to hold their sittings there, or in New York, or in Boston. The members thereof shall severally subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they may prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think
[27] *proper, but upon such evidence or information only as shall be

furnished by or on behalf of the Governments of the United States and of Great Britain respectively. They shall be bound to hear on each separate claim, if required, one person on behalf of each Government, as counsel or agent. A majority of the Assessors in each case shall be sufficient for a decision.

"The decision of the Assessors shall be given upon each claim in writing, and shall be signed by them respectively and dated.

"Every claim shall be presented to the Assessors within six months from the day of their first meeting, but they may, for good cause shown, extend the time for the presentation of any claim to a further period not exceeding three months.

"The Assessors shall report to each Government, at or before the expiration of one year from the date of their first meeting, the amount of claims decided by them up to the date of such report; if further claims then remain undecided, they shall make a further report at or before the expiration of two years from the date of such first meeting; and in case any claims remain undetermined at that time, they shall make a final report within a further period of six months.

"The report or reports shall be made in duplicate, and one copy thereof shall be delivered to the *Secretary of State of the [28] United States, and one copy thereof to the Representative of Her Britannic Majesty at Washington.

"All sums of money which may be awarded under this Article shall be payable at Washington, in coin, within twelve months after the delivery of each report.

"The Board of Assessors may employ such clerks as they shall think necessary.

"The expenses of the Board of Assessors shall be borne equally by the two Governments, and paid from time to time, as may be found expedient, on the production of accounts certified by the Board. The remuneration of the Assessors shall also be paid by the two Governments in equal moieties in a similar manner.

"ARTICLE XI.

"The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such Board be appointed, as a full, perfect, and final settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal *or Board, be considered and treated as finally [29] settled, barred, and henceforth inadmissible."

What the United States will attempt to establish.

In accordance with the provisions of Article III of the Treaty, the United States have the honor to lay before the Tribunal of Arbitration this their "Printed Case," accompanied by the documents, the official correspondence, and other evidence on which they rely. They propose to show, by a historical statement of the course pursued by the British Government toward the United States, from the outbreak of the insurrection in the Southern States of the United States, that there was on the part of the British Government a studied unfriendliness or fixed predisposition adverse to the United States, which furnished a constant motive for the several acts of omission and commission, hereinafter complained of, as inconsistent with its duty as a neutral.

Having adduced the evidence of this fact, the United States will next endeavor to indicate to the Tribunal of Arbitration what they deem to have been the duties of Great Britain toward the United States, in respect to the several cruisers which will be named in this paper.

They will then endeavor to show that Great Britain failed to perform those duties, both generally and specifically, as to each of the cruisers; and that such failure involved the liability to remunerate
[30] *the United States for losses thus inflicted upon them, upon their citizens, and upon others protected by their flag.

Lastly, they will endeavor to satisfy the Tribunal of Arbitration that it can find, in the testimony which will be offered by the United States, ample material for estimating the amount of such injuries, and they will ask the Tribunal to exercise the powers conferred upon it by Article VII of the Treaty, in awarding "a sum in gross, to be paid by Great Britain to the United States, for all the claims referred to."

In April, 1869, the President communicated to the Senate a mass of official correspondence and other papers relating to those claims, which was printed in five volumes. These, and two additional volumes, containing further correspondence, evidence, and documents accompany this case. The whole will form "the documents, the official correspondence, and the other evidence on which [the United States] relies," which is called for by Article III of the Treaty. Reference will be made throughout this paper to these volumes thus: "Vol. I, page 1," &c., &c., &c. The United States understand, however, that they may, under the terms of the Treaty, present hereafter "additional documents, correspondence, and evidence," and they reserve the right to do so.

Evidence and documents, and how referred to.

[31] *PART II.

THE UNFRIENDLY COURSE PURSUED BY GREAT BRITAIN TOWARD THE UNITED STATES FROM THE OUTBREAK TO THE CLOSE OF THE INSURRECTION.

In 1860 the United States had been an independent nation for a period of eighty-four years, and acknowledged as such by Great Britain for a period of seventy-seven years.

Relations of the United States with Great Britain prior to 1860.

During this period, while sharing to a remarkable extent in the general prosperity of the Christian Powers, they had so conducted their relations toward those Powers as to merit, and they believed that they had secured, the good-will and esteem of all. Their prosperity was the result of honest thrift; their exceptional increase of population was the fruit of a voluntary immigration to their shores; and the vast extension of their domain was acquired by purchase and not by conquest.

From no people had they better right to expect a just judgment than from the people of Great Britain. In 1783, the War of Separation had been closed by a treaty of peace, which adjusted all the questions then pending between the two Governments. In 1794, new questions
[32] having arisen, *growing out of the efforts of France to make the ports of the United States a base of hostile operations against Great Britain, a new treaty was made, at the instance of the United States, by which all the difficulties were arranged satisfactorily to Great Britain, and at the same time so as to preserve the neutrality and the honor of the United States. In the same year, also, the first neutrality act was passed by Congress,[1] prescribing rules and establishing the modes of proceeding to enable the United States to perform their duties as a neutral toward Great Britain and other belligerents. In 1812, they were forced into war with Great Britain, by the claim of that Power to impress seamen on the high seas from vessels of the United States. After three years the war ceased, and the claim has never since been practically enforced. In 1818, they met British negotiators more than half-way in arranging disputed points about the North American Fisheries. In 1827, having added to their own right of discovery the French and Spanish titles to the Pacific coast, they voluntarily agreed to a joint occupation of a disputed portion of this territory, rather than resort to the last arbitrament of nations. In 1838, when a serious rebellion prevailed in Canada, the Congress of the United States, at the request
[33] of Great Britain, *passed an act authorizing the Government to exercise exceptional powers to maintain the national neutrality. In 1842 the Government of the United States met a British Envoy in a spirit of conciliation, and adjusted by agreement the disputed boundary between Maine and the British Possessions. In 1846 they accepted the proposal of Great Britain, made at their own suggestion, to adopt the forty-ninth parallel as a compromise line between the two Columbias, and to give to Great Britain the whole of Vancouver's Island. In 1850 they waived, by the Clayton-Bulwer Treaty, the right of acquisition on the Isthmus, across which for many years the line of communication

[1] For an abstract of this act see Vol. IV, pp. 102, 103.

from one part of their dominions to the other must run. In 1854 they conferred upon the people of the British Possessions in North America the advantages of a free, full commercial intercourse with the United States for their products, without securing corresponding benefits in return. Thus a series of difficult questions, some of which might have led to war, had been peaceably arranged by negotiations, and the increasing intercourse of the two nations was constantly fostered by continuing acts of friendliness on the part of the Government of the United States.

Friendly relations of the two governments in 1860.

All the political relations of the United States with England, with the exception of the episode of the war of 1812, had been those of increasing amity and friendship, confirmed by a repeated *yielding of extreme rights, rather than imperil the cordial [34] relations which the United States so much desired to maintain with their nearest neighbors, their best customers, and their blood relations. They had good right, therefore, to believe, and they did believe, that, by virtue of this friendly political understanding, and in consequence of the gradual and steady assimilation of the commercial interests and the financial policies of the two Governments, there was in Great Britain, in the summer of 1860, sympathy for the Government and affection for the people of the United States. They had equal reason to think that neither the British Government nor people would look with either ignorance or unconcern upon any disaster to them. Above all, they had at that time a right to feel confident that, in any controversy which might grow out of the unhappy existence of African slavery in certain of the Southern States, the British Government would not exercise its sovereign powers, questionably or unquestionably, in favor of the supporters of slavery.

The United States in 1860.

On the 6th day of November, in that year, the jurisdiction of the Government of the United States extended unquestioned over eighteen States from which African slavery was excluded;[1] over *fifteen States in which it was established by law;[2] [35] and over a vast territory in which, under the then prevailing laws, persons with African blood in their veins could be held as slaves.

This large unsettled or partially settled territory, as it might become peopled, was also liable to be divided into new States, which, as they entered the Union, might, as the law then stood, become "Slave States," thus giving the advocates of slavery an increased strength in the Congress of the nation, and more especially in the Senate, and a more absolute control of the National Government.

Since the date named three new States, entitled to a representation of six Senators in the National Senate, have been admitted into the Union from this territory;[3] and the remainder of the great dominions of the United States is now divided into ten incipient political organizations, known as Territories, which, with one exception, may at some future time become States.[4]

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[1] Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Iowa, Wisconsin, California, Minnesota, Oregon.

[2] Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Kentucky, Tennessee, Louisiana, Mississippi, Alabama, Missouri, Arkansas, Florida, Texas.

[3] Nevada, Nebraska, Kansas. West Virginia was formed from a portion of the territory of Virginia, and for this reason does not come within the meaning of the text, though it became a State after the date mentioned.

[4] New Mexico, Utah, Washington, Dakota, Colorado, Arizona, Idaho, Montana, Wyoming, District of Columbia. The territory known as the Indian Territory is without political organization, having neither Governor nor Delegate in Congress. It cannot be considered as coming within the meaning of the text.

[36] *The general election for President of the United States, which took place on the 6th of November, 1860, was conducted in strict conformity with the provisions of the Constitution and laws of the country, and resulted in the choice of Abraham Lincoln. The party which elected him was pledged in advance to maintain "that the normal condition of all the territory of the United States is that of freedom," and to "deny the authority of Congress, of a Territorial Legislature, or of any individuals, to give legal existence to slavery in any Territory of the United States."[1] The word "Territory" is here used in the above-mentioned sense of an incipient political organization, which may at some future time become a State.

Election of Mr. Lincoln.

This decision of the people of the United States was resisted by some of the inhabitants of the States where slavery prevailed. The people of South Carolina, with an undoubted unanimity, commenced the hostile movement. In the following month they proclaimed, through a State Convention, their purpose to secede from the Union, because the party about to come into power had "announced that the South shall be excluded from the common territory."[2] The State of Alabama, on the 11th of January, with [37] *much less unanimity, (the vote in the Convention being 61 ayes to 39 nays,[3]) followed the example of South Carolina, giving as their reason that the election of Mr. Lincoln "by a sectional party, avowedly hostile to the domestic institutions [*i. e.*, slavery] of Alabama," was "a political wrong of an insulting and menacing character."[4]

Secession of South Carolina.

Of Alabama.

The State of Georgia followed after a much greater struggle, in which the party in favor of remaining in the Union resisted to the last, the final vote being 208 ayes to 89 nays.[5] Florida, Mississippi, Louisiana, and Texas each framed an ordinance of secession from the Union before the 4th of February, in each case with more or less unanimity.

Of Georgia and other States.

On the 4th of February, 1861, representatives from some of the States which had attempted to go through the form of secession, and representatives from the State of North Carolina, which had not at that time attempted it, met at Montgomery,[6] in the State of Alabama, for the purpose of organizing a provisional government, and having done so, elected Mr. Jefferson Davis as the Provisional President, and Mr. Alexander H. Stephens as the Provisional [38] Vice-President of the proposed *Confederation. In accepting this office, on the 18th of February, Mr. Jefferson Davis said:[7] "We have vainly endeavored to secure tranquillity and obtain respect for the rights to which we were entitled," [*i. e.*, the right to extend the domains of slavery.] "As a necessity, and not a choice, we have resorted to the remedy of separation." * * "Our industrial pursuits have received no check; the cultivation of our fields progresses as heretofore; and even should we be involved in war, there would be no considerable diminution in the production of the staples which have constituted our exports, in which the commercial world has an interest scarcely less than our own. This common interest of producer and consumer can only be intercepted

Opposition to the territorial limitation of slavery the cause of secession.

[1] Greeley's American Conflict, Vol. I, page 320.
[2] McPherson's History of the Rebellion, page 16.
[3] McPherson's History of the Rebellion, page 4.
[4] Appleton's Annual Cyclopædia, 1861, page 10.
[5] McPherson's History of the Rebellion, page 3.
[6] Appleton's Annual Cyclopædia, 1861, Vol. 1, page 126.
[7] Appleton's Annual Cyclopædia, 1861, page 613.

by an exterior force, which should obstruct its transmission to foreign markets—a course of conduct which would be detrimental to the manufacturing and commercial interests abroad."

Mr. Stephens spoke with still more explicitness. He said[1] the "foundations [of the new government] are laid. Its corner-stone rests upon the great truth that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and moral condition."

*Having thus formally declared that the contemplated limitation [39] of the territory within which negro slavery should be tolerated was the sole cause of the projected separation, and having appealed to the world to support them, the seceding States made efforts, which proved vain, to induce the other slave States to join them. No other States passed ordinances of secession until after the fall of Fort Sumter. On the contrary, the people of the States of Tennessee[2] and Missouri[3] before that time voted by large majorities against secession; and in the States of North Carolina and Virginia conventions were called and were in session when some of the events hereinafter referred to took place; and these bodies were known to be opposed to the revolutionary movements in South Carolina and the six States bordering on the Gulf of Mexico.

A party in the South opposed to secession.

A large minority, if not a majority, of the people of the slave States known as Border States, and of the mountainous parts of the six States known as the Gulf States, did not desire separation. They were attached to the Union, which had fostered and protected their interests, and they expressed no dissatisfaction, except with the proposed policy as to the extension of slavery, and *in many cases not even with that. Their feelings were forcibly [40] expressed by the distinguished Alexander H. Stephens, Provisional Vice-President of the Montgomery Government, in a speech made in the Convention in Georgia before that State passed the ordinance of secession, and about two months before he accepted office at Montgomery. He said,[4] "This step [of secession] once taken can never be recalled; and all the baleful and withering consequences that must follow will rest on the Convention for all coming time. When we and our posterity shall see our lovely South desolated by the demon of war, which this act of yours will inevitably invite and call forth; when our green fields of waving harvest shall be trodden down by the murderous soldiery and fiery car of war sweeping over our land; our temples of justice laid in ashes; all the horrors and desolations of war upon us, who but this Convention will be held responsible for it, and who but him who shall have given his vote for this unwise and ill timed measure, as I honestly think and believe, shall be held to strict account for this suicidal act by the present generation, and probably cursed and execrated by posterity for all coming time, for the wide and desolating ruin that will inevitably follow this act you now propose to perpe*trate? Pause, [41] I entreat you, and consider for a moment what reasons you can give that will even satisfy yourselves in calmer moments; what reasons you can give to your fellow-sufferers in the calamity that it will bring upon us. What reasons can you give to the nations of the earth to justify it? They will be the calm and deliberate judges in the case, and what cause or overt act can you name or point to, on which to rest the plea of justification? What right has the North assailed? What

[1] Appleton's Annual Cyclopædia, 1861, page 129.
[2] McPherson's History of the Rebellion, page 5.
[3] Appleton's Annual Cyclopædia, 1861, page 478.
[4] McPherson's History of the Rebellion, page 25.

interest of the South has been invaded? What justice has been denied? And what claim founded in justice and right has been withheld? Can either of you to-day name one governmental act of wrong, deliberately and purposely done by the Government of Washington, of which the South has a right to complain? I challenge the answer."

All the facts above referred to in this paper were patent to the whole world, were ostentatiously put forth by the insurgents, and were openly commented upon by the public press throughout the United States. It is, therefore, not unreasonable to presume that the British Government received from its representatives and agents in the United States full information concerning them as they took place. To suppose the
[42] *contrary would be to ignore the well-known fidelity of those officers.

Inauguration of Mr. Lincoln.

Mr. Lincoln entered upon the duties of his office on the 4th of March, 1861. He found the little Army of the United States scattered and disintegrated; the Navy sent to distant quarters of the globe; the Treasury bankrupt; the credit of the United States seriously injured by forced sales of Government securities; the public service demoralized; the various Departments of the Government filled with unfaithful clerks and officers, whose sympathies were with the South, who had been placed in their positions for the purpose of paralyzing his administration. These facts, which were known to the world, must have attracted the attention of the observant Representative of Great Britain at Washington, and must have enabled him to make clear to his Government the reasons why the Cabinet at Washington must pause before asserting its rights by force.

The British Government informed of his purposes.

The new Government took an early opportunity to inform the British Government of its purposes.[1] On the 9th of March, four days after the installment of Mr. Lincoln, Mr. Dallas, the Minister of the United States at London, was instructed
[43] to communicate to Lord Russell the Inaugural Ad*dress of the President, and to assure him that the President entertained full confidence in the speedy restoration of the harmony and unity of the Government. He was further told that "the United States have had too many assurances and manifestations of the friendship and good will of Great Britain, to entertain any doubt that these considerations will have their just influence with the British Government, and will prevent that Government from yielding to solicitations to intervene in any unfriendly way in the domestic concerns of our country."

Lord John Russell promises to await Mr. Adams's arrival before acting.

[2] Mr. Dallas, in complying with his instructions, (April 9, 1861,) pressed upon Lord Russel the importance of England and France abstaining, "at least for a considerable time, from doing what, by encouraging groundless hopes, would widen a breach still thought capable of being closed." Lord Russell replied that the coming of Mr. Adams (Mr. Dallas's successor)[1] "would doubtless be regarded as the appropriate and natural occasion for finally discussing and determining the question."

The United States therefore had reasonable ground to believe, not only in view of the great moral interests of which they were the
[44] exponents, and of the long-standing friendship between them *and Great Britain, but also in consequence of the voluntary promise of Lord Russell, that an opportunity would be afforded them to explain their views and purposes through their newly selected and specially trusted representative; and least of all had they cause to anticipate

[1] Seward to Dallas, Vol. I, page 8.
[2] Dallas to Seward, Vol. I, page 12.

that a Government which they supposed to be in sympathy with their policy as to African slavery, would precipitate a decision as to the insurgents, which was so obviously injurious to the United States, as to almost appear to have been designedly so.

Surrender of Fort Sumter.

The delay upon which the Government of the United States relied to firmly secure the loyalty of the Border States, and their aid in inducing the peaceable return of the Gulf States, was interrupted by the attack upon Fort Sumter, made by order of the Government at Montgomery. This attack ended in the surrender of the garrison on the 13th of April. This was followed on the 15th of April by a [1]Proclamation of the President, calling out the militia and convening an extra session of Congress on the 4th day of the next July.

The insurgents to issue letters of marque.

On the 17th of April, Mr. [2]Jefferson Davis gave notice that letters of marque would be granted by the persons who had attempted to establish a *Government at Montgomery, [45] by usurping the authority of the United States.

Proclamation giving notice of blockade.

Objects of that proclamation.

On the 19th of April President Lincoln issued a Proclamation declaring that a blockade of the ports within the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas would be established for the purpose of collecting the revenue in the disturbed part of the country, and for the protection of the public peace, and of the lives and properties of quiet and orderly citizens, until Congress should assemble. That body was summoned to assemble on the fourth day of the following July.

The full text of this Proclamation will be found in Vol. I, page 21.

In the course of the discussion between the two Governments growing out of the war, it has been repeatedly asserted that Her Majesty's Government was induced to confer upon the insurgents in the South the status of belligerents, in consequence of the receipt of the news of the President's Proclamation of April 19. The United States are therefore forced to invite the patience of the Board of Arbitrators, while they establish, from conclusive proof, that Her Majesty's Government is mistaken in that respect.

The joint action of France invited by Great Britain.

Before any armed collision had taken place, there existed an understanding between Her Majesty's *Government [46] and the Government of the Emperor of the French, with a view to securing a simultaneous and identical course of action of the two Governments on American questions. It is within the power of the British Government to inform the Arbitrators when that understanding was reached. The fact that it had been agreed to by the two Governments was communicated to Mr. Dallas, by Lord John Russell, on the 1st day of May, 1861.[3]

There was nothing in the previous relations between Great Britain and the United States which made it necessary for Her Majesty's Government to seek the advice or to invite the support of the Emperor of the French in the crisis which was threatened. The United States are at a loss to conjecture what inducement could have prompted such an act, unless it may have been the perception on the part of Her Majesty's Government that it was in its nature not only unfriendly, but almost hostile to the United States.

When the news of the bloodless attack upon Fort Sumter became known in Europe, Her Majesty's Government apparently assumed that

[1] Vol. I, page 16.
[2] Appleton's Annual Cyclopædia, 1861, page 137.
[3] Mr. Dallas to Mr. Seward, May 2, 1861. Vol. I, p. 33, 34.

the time had come for the joint action which had been previously agreed upon; and, without waiting to learn the purposes of the United
[47] States, it *announced its intention to take the first step by recognizing the insurgents as belligerents.

When the President's Proclamation was received in Great Britain.

The President's Proclamation, which has since been made the ostensible reason for this determination, was issued on the 19th of April, and was made public in the Washington newspapers of the morning of the 20th. An imperfect copy of it was also telegraphed to New York, and from thence to Boston, in each of which cities it appeared in the newspapers of the morning of the 20th.

The New York papers of the 20th gave the substance of the Proclamation, without the official commencement and close, and with several errors of more or less importance.

The Boston papers of the same date, in addition to the errors in the New York copy, omitted the very important statement in regard to the collection of the revenue, which appears in the Proclamation as the main cause of its issue.

During the morning of the 19th of April, a riot took place in Baltimore, which ended in severing direct communication, by rail or telegraph, between Washington and New York. Telegraphic communication was not restored until the 30th of the month. The regular passage of the mails and trains was resumed about the same time. It
[48] appears by a dispatch from Lord Lyons to Lord *John Russell that the mails had not been resumed on the 27th.[1]

It is absolutely certain that no full copy of the text of the Proclamation could have left Washington by the mails of the 19th, and equally certain that no copy could have reached New York from Washington after the 19th for several days.

On the 20th the steamer Canadian sailed from Portland, taking the Boston papers of that day, with the imperfect copy of the Proclamation, in which the clause in regard to the collection of the revenue was suppressed. This steamer arrived at Londonderry on the 1st of May, and the "Daily News" of London, of the 2d of May, published the following telegraphic items of news: "President Lincoln has issued a Proclamation, declaring a blockade of all the ports in the seceded States. The Federal Government will condemn as pirates all privateer-vessels which may be seized by Federal ships." The Canadian arrived at Liverpool on the 2d of May, and the "Daily News," of the 3d, and the "Times," of the 4th of May, published the imperfect Boston copy of the Proclamation in the language as shown in the note below.[2]
[49] No other than the Boston copy of the *Proclamation appears to have been published in the London newspapers. It is not likely that a copy was received in London before the 10th, by the Fulton from New York.

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[1] Blue Book, North America, No. 1, 1862, page 26.

[2] The following is the President's Proclamation of the blockade of the Southern ports:

"An insurrection against the Government of the United States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and the laws of the United States cannot be executed effectually therein conformably to that provision of the Constitution which requires duties to be uniform throughout the United States; and further, a combination of persons, engaged in such insurrection, have threatened to grant pretended letters of marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country lawfully engaged in commerce on the high seas and in the waters of the United States; and whereas an Executive Proclamation has already been issued, requiring the persons engaged in these disorderly proceedings to desist, and therefor

Opinion of Law Officers taken on an imperfect copy.

It was on this meager and incorrect information that the advice of the British Law Officers was based, upon which that Government acted. On the evening of the 2d of May, Lord John Russell stated in the House of Commons the

"Her *Majesty's Government heard the other day that the Con- [50] federated States have issued letters of marque, and to-day we have heard that it is intended there shall be a blockade of all the ports of the Southern States. As to the general provisions of the law of nations on these questions, some of the points are so new, as well as so important, that they have been referred to the Law Officers of the Crown for their opinions."

Her Majesty's Government decide on the 1st of May to recognize a state of war.

It is with deep regret that the United States find themselves obliged to lay before the Tribunal of Arbitration the evidence that, when this announcement was made in the House of Commons, Her Majesty's Government had already decided to recognize the right of the Southern insurgents to attack and destroy the commerce of the United States on the high seas. On the 1st day of May, 1861, (two days before they could have heard of the issue of the President's Proclamation,) Lord John Russell wrote as follows to the Lords Commissioners of the Admiralty:[2]

"The intelligence which reached this country by the last mail from the United States gives reason to suppose that a civil war between the Northern and Southern States of that Confederacy was imminent, if indeed it might not be considered to have already begun.

*"Simultaneously with the arrival of this news, a telegram, [51] purporting to have been conveyed to Halifax from the United States, was received, which announced that the President of the Southern Confederacy had taken steps for issuing letters of marque against the vessels of the Northern States."

* * * * *

"I need scarcely observe to Your Lordships that it may be right to apprise the Admiral that, much as Her Majesty regrets the prospect of civil war breaking out in a country in the happiness and peace of which Her Majesty takes the deepest interest, *it is Her Majesty's pleasure that nothing should be done by her naval forces which should indicate any partiality or preference for either party in the contest that may ensue.*"

Lord John Russell and the insurgent commissioners discuss the recognition of Southern independence.

On the 4th of May[3] Lord John Russell held an interview with some individuals, whom he described as "the three gentlemen deputed by the Southern Confederacy to obtain their recognition as an independent State." Although he informed them that he could hold no official communication with them,

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calling out the militia force for the purpose of repressing the same, and convening Congress in extraordinary session to deliberate and determine thereon, the President, with a view to the same purposes before mentioned, and to the protection of the public peace and the lives and property of its orderly citizens pursuing their lawful occupations, until Congress shall have assembled and deliberated on said unlawful proceedings, or until the same shall have ceased, has further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and the laws of nations in such cases provided. For this purpose a competent force will be posted, so as to prevent the entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, any vessel shall attempt to leave any of the said ports, she will be duly warned by the commander of one of said blockading vessels, who will indorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave a blockaded port, she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as may be deemed advisable."

[1] Vol. IV, page 482. [2] Vol. I, page 33. [3] Vol. I, page 37.

he did discuss with them the question of recognition, and he indicated to them the points to which they must direct their attention in
[52] the discussion of the subject. He also *listened to their views in response thereto; and when on the termination of the interview they informed him "that they should remain in London for the present, in the hope that the recognition of the Southern Confederacy would not be long delayed," he interposed no objections to such a course, and suggested no improbability of such a recognition.

On the 5th of May the steamship Persia arrived at Liverpool with advices from New York to the 25th of April. Lord John Russell stated on Monday, the 6th of May, in a communication to Lord Cowley,[1] "that Her Majesty's Government received no dispatches from Lord Lyons by the mail which has just arrived, [the Persia,] the communication between Washington and New York being interrupted."

Communication with the French Government.

In the same dispatch Lord Cowley is informed "that Her Majesty's Government cannot hesitate to admit that such Confederacy is entitled to be considered as a belligerent, and as such invested with all the rights and prerogatives of a belligerent," and he is instructed to invite the French Government to a joint action, and a line of joint policy with the British Government, toward the United States. Lord Cowley,
[53] under these instructions, had an interview on the 9th of May *with the French Minister for Foreign Affairs. The Tribunal may infer from the published correspondence that it was assumed at this interview that the two Governments should act together, and that the letters of marque which might be issued by the insurgents should be respected. Lord Cowley reported that[2] "His Excellency said further that in looking for precedents it had been discovered that Great Britain, although treating at the commencement of the American war letters of marque as piracy, had, after a time, recognized the belligerent rights of the States in rebellion against her." The answer to these instructions was received at the Foreign Office on the 11th of May. The United States are firmly convinced that no correct or complete copy of the President's Proclamation could have been received there in advance of it. It is known that the official copy forwarded by Lord Lyons to his Government reached London on the 14th of May.[3] The official copy sent by Mr. Seward to Mr. Dallas reached Southampton on the evening of the 9th of May, and London on the 10th. It is stated in the British notes on Mr. Fish's instruction of September 25, 1869, to Mr. Motley, that the Proclamation was communicated officially by Mr. Dallas
[54] to Lord *John Russell on the 11th. There is no evidence of this fact in the archives of the Legation of the United States at London, or at the Department of State at Washington. But even if the statement in the notes be correct, still the British Government received in the afternoon of the 11th of May, 1861, its first complete and official copy of the President's Proclamation, ten days after Lord John Russell had decided to award the rights of belligerency on the ocean to the insurgents, eight days after the subject had been referred to the Law Officers for their opinion, and five days after the decision of Her Majesty's Government upon that opinion had been announced in the House of Commons, as hereinafter set forth.

Answer of the French Government.

When the President's Proclamation was received by Great Britain.

On the same day on which Lord John Russell wrote Lord Cowley (May 6th) he wrote to Lord Lyons,[4] calling the United States "the

[1] Vol. I, page 36; see also same volume, page 48.
[2] Vol. I, page 49.
[3] British Blue Book on the Blockade, 1861, page 1.
[4] Vol. I, pages 36, 37.

northern portion of the late Union," and reiterating that Her Majesty's Government "cannot question the right of the Southern States to be recognized as a belligerent;" and in the House of Commons, on the same evening, he announced that the Attorney and Solicitor General, the Queen's Advocate, and the Government had come to the conclusion that the Southern Confederacy of America must be treated as a belligerent. On the same evening, Lord Palmerston said in the [55] House of Commons,[1] "No one can regret more than I do the intelligence which has been received within the last few days from America; but at the same time, any one must have been short-sighted and little capable of anticipating the probable course of human events, who had not for a long time foreseen events of a similar character to those we now deplore. From the commencement of this unfortunate quarrel between the two sections of the United States, it is evident that the causes of disunion were too deeply seated to make it possible that separation would not take place, and it was also obvious that passions were so roused on both sides as to make it highly improbable that such separation could take place without a contest."

Effect of recognition of a state of war.

A question was asked in the House of Commons on the 7th of May,[2] the next evening, as to the extent of the belligerent rights at sea which would be acquired by the South, to which Lord Palmerston declined to make answer "until the Government should be in a condition, after consulting its legal advisers, to make some distinct communication on the subject."

On the 9th of May,[2] Sir George Lewis announced that a pro- [56] clamation would be issued, stating "the general effect of the common and statute law on the matter;" and on the 10th, Lord Granville[3] repeated the declaration in the House of Lords. In the discussion there it was assumed by all the speakers that the insurgent Government might lawfully issue letters of marque.

It is believed by the United States that it was well known to Her Majesty's Government during all this time, that Mr. Adams was about to arrive with instruction from the new administration, and that he came possessed of its most confidential views on these important questions. On the 2d May Mr. Dallas wrote Mr. Seward thus:[4] "The solicitude felt by Lord John Russell as to the effect of certain measures represented as likely to be adopted by the President, induced him to request me to call at his private residence yesterday. * * * I informed him that Mr. Adams had apprised me of his intention to be on his way hither in the steamship Niagara, which left Boston on the 1st of May, and that he would probably arrive in less than two weeks, by the 12th or 15th instant. His Lordship acquiesced in the expediency of disregarding mere rumor, and waiting the full knowledge to be brought by my successor." The United States, for reasons already given, have no doubt that, before that interview, Her Majesty's Government [57] had already decided upon their course of action. Mr. Adams did actually arrive in London on the evening of the 13th of May.

The Queen's Proclamation.

The Queen's Proclamation of neutrality was issued on the morning of that day.

Uncertainty of Her Majesty's Government.

A careful examination of the published correspondence and speeches of Lord John Russell shows that Her Majesty's Government was at that time by no means certain that there was a war in the United States. On the 1st of May,[5] he directs the

[1] Hansard's Debates, 3d series, Vol. CLXII, pages 1622-23.
[2] Vol. IV, page 484.
[3] Vol. IV, page 486.
[4] Vol. I, page 34.
[5] Vol. I, page 33.

Admiralty as to the course to be pursued with reference to the insurgent cruisers in the war which, he thinks, *may* "have already begun." On the 2d of May[1] he asks the Law Officers of the Crown what course the Government shall pursue. On the 1st of June, however, he is in doubt on the subject, and he writes to the Lords Commissioners of the Admiralty, informing them of the rules to be observed by the British naval[2] forces "in the contest *which appears to be imminent* between the United States and the so-styled Confederate States of North America." It would seem, therefore, that on the 1st of June, 1861, Her Majesty's Government regarded only as "imminent" the hostilities which Her Majesty's Proclamation of the 13th of the previous May alleged
[58] had "unhappily *commenced between the United States of America and certain States styling themselves the Confederate States of America." In point of fact, Lord John Russell's dispatch of the 1st of June described with fidelity the condition of things so far as then known in London; for at that time the intelligence of the exhilarating effect of the Queen's Proclamation upon the insurgents, and its depressing effect upon the Government and loyal population of the United States, had not reached Europe.

Effect of the Queen's Proclamation.

Whatever Lord John Russell, and his colleagues in the Government, who decided to counsel Her Majesty to issue the Proclamation of May 13th, may have thought, the debates in Parliament removed any excuse for ignorance as to the effect of that instrument.

As early as the 29th of April, in the House of Commons, an opposition member had said that "there could be no doubt that if the war should be continued in that country [the United States] *there would be thousands of privateers hovering about those coasts;*"[3] to which the Chancellor of the Exchequer (Mr. Gladstone) immediately replied: "All that relates to the dangers which may arise between British merchant-ships and American or other privateers * * * I shall pretermit, not
[59] because I presume to say or think that they are *insignificant, but because I feel it my duty to address myself to those points which touch more directly and more practically [the Budget] the matter in hand."[4]

In a debate in the House of Lords, on the 10th of May, Lord Hardwicke[5] said that he "was anxious that the House should not enter too strong a protest against that which was a natural consequence of war, namely, that vessels should be fitted out by private individuals under letters of marque. That was, no doubt, privateering, but it did not by any means follow that privateering was piracy. He believed that if privateering-ships were put in the hands of proper officers, they were not engaged in piracy any more than men-of-war. He thought that a feeble State engaged in a war with a powerful one had a right to make use of its merchant-vessels for the purpose of carrying on the contest, and there was no violation of the law of nations in such a proceeding."

In the more elaborate discussion which followed on the 16th of the same month in the House of Lords, the Lord Chancellor[6] said: "If, after the publishing of the present proclamation, any English subject were to enter into the service of either of the belligerents on the
[60] other side of the Atlantic, there could be no doubt that the *person so acting would be liable to be punished for a violation of

[1] Vol. IV, page 482. [2] Vol. I, page 335.
[3] Hansard's Debates, 3d series, Vol. CLXII, page 1276.
[4] Hansard's Debates, 3d series, Vol. CLXII, page 1277.
[5] Vol. IV, page 486. [6] Vol. IV, page 490.

the laws of his own country, and would have no right to claim any interference on the part of his Government to shield him from any consequences which might arise. There could, however, at the same time, be no doubt that, although he would be guilty of a breach of the laws of his own country, he ought not to be regarded as a pirate for acting under a commission from a State admitted to be entitled to the exercise of belligerent rights, and carrying on what might be called a *justum bellum*. Anybody dealing with a man under those circumstances as a pirate, and putting him to death, would, he contended, be guilty of murder."

The distinguished jurist, who then sat upon the woolsack, described in that speech one legal effect of this hastily issued Proclamation with undoubted correctness. It relieved Englishmen or foreigners in England, and Englishmen on insurgent cruisers carrying on war against the United States, from the penalties of a high class of felonies. Lord Lyndhurst, one of the most eminent predecessors of Lord Campbell, in an opinion in the House of Lords in 1853, cited with respect by Sir George Cornwall Lewis, (himself one of Lord Palmerston's Cabinet,) said: "If a number of British subjects were to combine and conspire together to excite revolt among the inhabi*tants of a friendly [61] State, * * * and these persons, in pursuance of that conspiracy, were to issue manifestoes and proclamations for the purpose of carrying that object into effect; above all, *if they were to subscribe money for the purpose of purchasing arms to give effect to that intended enterprise*, I conceive, and I state with confidence, that such persons would be guilty of a misdemeanor, and liable to suffer punishment by the laws of this country, inasmuch as their conduct would tend to embroil the two countries together, to lead to remonstrances by the one with the other, and ultimately, it might be, to war. * * * Foreigners residing in this country, as long as they reside here under the protection of this country, are considered in the light of British subjects, or rather subjects of Her Majesty, and are punishable by the criminal law precisely in the same manner, to the same extent, and under the same conditions as natural-born subjects of Her Majesty. * * * The offense of endeavoring to excite revolt against a neighboring State is an offense against the law of nations. No writer on the law of nations states otherwise. But the law of nations, according to the decision of our greatest judges, is part of the law of England."[1]

Mr. Bright's views.

*The United States will close this branch of the examination [62] by citing the language of Mr. Bright in the House of Commons, on the 13th of March, 1865.[2] "Going back nearly four years, we recollect what occurred when the news arrived of the first shot having been fired at Fort Sumter. That, I think, was about the 12th of April. Immediately after that time it was announced that a new minister was coming to this country. Mr. Dallas had intimated to the Government that, as he did not represent the new President, he would rather not undertake anything of importance; but that his successor was on his way, and would arrive on such a day. When a man leaves New York on a given day you can calculate to about twelve hours when he will be in London. Mr. Adams, I think, arrived in London about the 13th of May, and when he opened his newspaper next morning he found the Proclamation of Neutrality, acknowledging the belligerent rights of the South. I say that the proper course to

[1] On Foreign Jurisdiction and the Extradition of Criminals; by the Right Hon. Sir George Cornwall Lewis, Bart., M. P., London, 1859, page 66.

[2] Vol. V, pages 639, 640.

have taken would have been to wait till Mr. Adams arrived here, and to have discussed the matter with him in a friendly manner, explaining the ground upon which the English Government had felt themselves bound to issue that proclamation, and representing that it was not done in any manner as an unfriendly act toward the United States
[63] Government. But no *precaution whatever was taken. It was done with unfriendly haste, and had this effect: that it gave comfort and courage to the conspiracy at Montgomery and at Richmond, and caused great grief and irritation among that portion of the people of America most strongly desirous of maintaining amicable and friendly relations between their country and England."

The sovereign right to issue such a proclamation not denied.

The United States have made this review of the course pursued by Great Britain in recognizing the insurgents as belligerents, with no purpose of questioning the sovereign right of that Power to determine for itself whether the facts at that time justified such a recognition. Although the United States strenuously deny that the facts as they then were known to Her Majesty's Government did justify that Government in conferring upon the rebellious citizens of the United States the privilege of belligerents, and still less justified it in counseling France to do the same thing, yet they recognize and insist that (in the language of the President to Congress on the 6th day of December, 1869) a "nation is its own judge when to accord the rights of belligerency, either to a people struggling to free themselves from a government they believe to be oppressive, or to independent nations at war with each other."[1]

[64] But while thus firmly insisting upon the sover*eign rights of independent nationality, they also maintain "that the rightfulness of such an act depends upon the occasion and the circumstances, and it is an act, like the sovereign act of war, which the morality of the public law and practice requires should be deliberate, seasonable, and just, in reference to surrounding facts;"[2] and "they regard the concession of belligerency by Great Britain as a part of this case only so far as it shows the beginning and animus of that course of conduct which resulted so disastrously to the United States."[3]

And issued with an unfriendly purpose.

Viewed in this light, the United States, with deep and unfeigned regret, have been forced to conclude, from all the circumstances, that Her Majesty's Government was actuated at that time by a conscious unfriendly purpose toward the United States.

Mr. Rolin-Jacquemyns on the Queen's proclamation.

In the language of a continental publicist, "L'Angleterre a été bien pressée de faire usage de son droit strict pour constater solennellement que l'Union Américaine était ébranlée, et donner aux insurgés, ce que le monde entier a considéré tout au moins comme un appui moral; * * l'acte a été posé la veille du jour où le nouvel ambassadeur américain, M. Adams, devait
[65] débarquer à Londres, et au moment où positivement les insurgés n'existaient pas comme puisance navale, où ils n'avaient de marine et de tribunaux de prise que sur le papier."[4]

Unfriendly conduct of Great Britain as to the declarations of the Congress of Paris.

This precipitate and unfriendly act of Great Britain did not go forth alone. On the 6th of May, 1861, five days before the receipt of the authentic copy of the President's Proclamation, Lord John Russell instructed Lord Cowley, the British Ambassador at Paris, to ascertain whether the Imperial

[1] Annual Message of the President to Congress, 1869.
[2] Mr. Fish to Mr. Motley, September 25, 1869. Vol. VI, page 4.
[3] Mr. Fish to Mr. Motley, May 15, 1869. Vol. VI, page 1.
[4] De la neutralité de la Grande-Bretagne pendant la guerre civile américaine d'après M. Montague Bernard, par G. Rolin-Jacquemyns, page 11.

Government was disposed to make a joint endeavor with Her Majesty's Government "to obtain from each of the belligerents [*observe that the insurgents were styled "belligerents" seven days in advance of the Queen's proclamation*] a formal recognition of the second and third articles of the Declaration of Paris."

Lord Cowley, on the 9th of May, informed Lord John Russell that "the Imperial Government concurred entirely in the views of Her Majesty's Government, and would be prepared to join Her Majesty's Government in endeavoring to obtain of the belligerents a formal recognition of the second and third articles of the Declaration of Paris."[1]

This proposition to open direct negotiations *with the insur- [66]
gents was the second step in the joint action which had been agreed upon. For reasons which Her Majesty's Government is in a position to explain, but which can only be conjectured by the United States and by the Tribunal, care appears to have been taken to prevent the knowledge of it from reaching the Government of the United States.

On the receipt of the information from Lord Cowley, Lord John Russell prepared at once a draught of instructions to Lord Lyons, the British Minister at Washington, and, on the 16th of May, sent them to Lord Cowley to be submitted to the Emperor's Government.[2]

On the next day Lord Cowley replied that he had seen M. Thouvenel, the Minister for Foreign Affairs, and added: "M. Thouvenel had already written to M. Mercier [the French Minister at Washington] in the same terms as your Lordship proposes to address your instructions to Lord Lyons. I need hardly add that His Excellency concurs entirely in the draught."

On the 18th of May Lord John Russell hastened to send his instructions to Lord Lyons.[3] He told him "to encourage the Government" of the United States "in any disposition which they might evince to recognize the Declaration of Paris in *regard to privateering;" [67]
and he added that "Her Majesty's Government do not doubt that they will, without hesitation, recognize the remaining articles of the declaration." He continued: "You will clearly understand that Her Majesty's Government cannot accept the renunciation of privateering on the part of the Government of the United States, if coupled with the condition that they should enforce its renunciation on the Confederate States, either by denying their right to issue letters of marque, or by interfering with the belligerent operations of vessels holding from them such letters of marque;" and he closed by instructing Lord Lyons to take such means as he might judge most expedient to transmit to Her Majesty's Consul at Charleston or New Orleans a copy of a previous dispatch of the same day, in order that it might be communicated to Mr. Jefferson Davis at Montgomery. Lord Lyons had no instructions to show to Mr. Seward the dispatch from which these citations have been made, and it evidently was contemplated that he should not exhibit it.

He was, however, to read to him the previous instructions of the same date referred to in that dispatch, and to leave a copy with him, if desired. These previous instructions, numbered 136, may be found on the 107th page of the first of the accom*panying volumes. It [68]
was not only to be shown to Mr. Seward, but a copy of it was to be shown to Mr. Jefferson Davis.[3] The attention of the Tribunal of Arbi-

[1] Vol. I, page 49. [2] Vol. I, page 50. [3] Vol. I, page 51.

tration is, in this connection, particularly invited to the fact that these instructions, numbered 136, contain nothing indicating a design on the part of the British Government to put itself in communication with the insurgent authorities, nothing to induce Mr. Seward to think that they were other than what, on their face, they purported to be, a communication from the Government of Great Britain to the Government of the United States, through the ordinary diplomatic channel.

It is not improbable that the Arbitrators may be of opinion that the use of the British Legation at Washington for such a purpose was an act which the United States would have been justified in regarding as a cause of war. It was, to say the least, an abuse of diplomatic privilege, and a violation, in the person of Her Majesty's Principal Secretary of State for Foreign Affairs, of the duties of neutrality which Her Majesty's Government was about to impose upon her subjects.

The instructions to Lord Lyons might have been regarded as a cause of war.

Before relating what Lord Lyons did, under these instructions, it is necessary to pause in order that the Tribunal may be informed what Mr. Seward and Mr. Adams had been doing in the same
[69] *matter simultaneously with the proceedings which have been detailed.

In the year 1854 the Government of the United States submitted to the principal maritime nations two propositions, soliciting their assent to them as permanent principles of international law. These propositions were, that free ships should make free goods; and that neutral property on board an enemy's vessel should not be subject to confiscation unless contraband of war.

Former negotiations regarding the Declaration of the Congress of Paris.

Great Britain, being then at war with Russia, did not act upon these propositions; but in the Congress which assembled at Paris when the peace of 1856 was made, Great Britain and the other nations, parties to the Congress, gave their assent to them, and to two other propositions—the abolition of privateering, and the necessity of efficiency to the legalization of a blockade. It was also agreed that the four propositions should be maintained as a whole and indivisible, and that the Powers who might accede to them should accede to them as such.[1]

Great Britain then joined in inviting the United States to give its adhesion to the four indivisible points. The Washington Cabinet of that day replied that the United States was willing to assent to all the
[70] propositions, except the one re*lating to privateering, as being, in fact, recognitions of principles which had always been maintained by them; but that they could not consent to abolish privateering without a further agreement to exempt private property from capture on the high seas; and they proposed to amend the declaration of the Congress of Paris in that sense, and offered to give their adhesion to it when so amended.

In January, 1857, the proposals of the United States not having been acted upon, their Minister at London was directed to suspend negotiations until the new President, Mr. Buchanan, could examine the subject; and the suspension continued until after Mr. Lincoln was inaugurated.

On the 24th of April, 1861, less than two months after Mr. Lincoln's accession to power, Mr. Seward resumed the suspended negotiations by instructing Mr. Adams[2] (similar instructions being given to the Ministers of the United States to the other maritime powers) to give an unqualified

[1] 24th Protocol, April 16, 1856, Congress of Paris.
[2] Vol. I, page 44.

assent to the four propositions, and to bring the negotiation to a speedy and satisfactory conclusion.

Owing, probably, to the interruption in the communications between Washington and New York when the dispatch of April 24 was written, Mr. Adams does not appear to have been able to *communicate his instructions to Lord John Russell before the 21st of May. He then informed Lord John that he had received instructions to negotiate, which he would "submit to his consideration if there was any disposition to pursue the matter further." Lord John Russell "expressed the willingness of Great Britain to negotiate, but he seemed to desire to leave the subject in the hands of Lord Lyons, to whom he intimated that he had already transmitted authority to assent to any modification of the only point in issue which the Government of the United States might prefer."[1] He did not inform Mr. Adams that he also proposed to open negotiations with the insurgents, nor had Mr. Adams reason to suspect that fact. [71]

Matters were thus suspended in London, to enable Lord Lyons to work out Lord John Russell's instructions at Washington and in Richmond.

Lord Lyons received the dispatches of the 18th of May on the 2d of June,[2] and at once conferred with Mr. Mercier. It was agreed that they should try to manage the business so as to prevent "an inconvenient outbreak from the Government"[3] of the United States. He then notified Earl Russell of what they proposed to do, and informed him of the instructions to Mr. Adams on this subject. He also intimated that it would be unreasonable *to expect that the insurgents should abandon privateering, unless "in return for some great concession." What concession remained to be given except recognition of national independence? [72]

Lord Lyons's interview with Mr. Seward.

It was not until the 15th of June that Lord Lyons and Mr. Mercier communicated the purport of their instructions to Mr. Seward in a joint interview, of which we have Mr. Seward's account[4] and Lord Lyons's account,[5] both dated the 17th of June. These accounts do not differ materially. The action as to the British Minister was this: Lord Lyons stated that he was instructed to read a dispatch to Mr. Seward and to leave a copy with him if desired. Mr. Seward refused to permit the dispatch to be read officially, unless he could first have an opportunity to acquaint himself with its contents. Lord Lyons handed him Lord John Russell's No. 136 for the purpose of unofficial examination. Mr. Seward saw that it spoke of the insurgents as belligerents, and on that ground refused to permit it to be officially communicated to him. He added that he preferred to treat the question in London, and Lord Lyons left with him, unofficially, a copy of Lord John Russell's 136, in order that he might more intelligently instruct Mr. Adams.

The instructions thereupon written to Mr. *Adams are in the same tone.[6] Mr. Seward expresses regret that the British and French governments should have seen fit to take joint action in the matter; he refuses to admit that there are two belligerent parties to the struggle; he expresses regret that Great Britain did not await the arrival of Mr. Adams before instructing Lord Lyons, as Mr. Adams's instructions covered the whole ground; but he nowhere manifests a knowledge of the purpose of Great Britain to enter into communica- [73]

[1] Vol. I, page 52. [2] Vol. I, page 55. [3] Vol. I, page 56.
[4] Vol. I, page 60. [5] Vol. I, page 62. [6] Vol. I, page 205.

tions with the insurgents at Richmond. That was studiously concealed from him.

The negotiations were then transferred again to London, to the "profound surprise"[1] of Mr. Adams. They were protracted there until the 19th of August, when Lord Russell informed Mr. Adams that Great Britain could only receive the assent of the United States to the Declaration of Paris upon the condition that Her Majesty should not thereby "undertake any engagement which should have any bearing, direct or indirect," upon the insurrection. The United States declined to be put upon a different footing from that of the forty-two independent Powers enumerated in Lord Russell's No. 136 to Lord Lyons, whose assent had been received without conditions, and the negotiations dropped.

Termination of negotiations with United States.

[74] *The arbitrators will thus perceive that Her Majesty's Government, having recognized the insurgents as belligerents, felt itself bound to receive the assent of the United States to the declarations of the Congress of Paris only conditionally, so as to have no bearing upon letters of marque that might be issued by the insurgents. But they will also observe that the two steps of the recognition of belligerency and the invitations to assent to the second and third clauses in the declarations were taken simultaneously, in accordance with a previous arrangement for joint action; and it is not impossible that they may come to the conclusion that Her Majesty's Government, when the insurgents were recognized as belligerents, contemplated that they would proceed to issue letters of marque, and intended to legalize those letters in the eye of British law, and to countenance the bearers of them in the destruction of American commerce.

Great Britain desired to legalize privateering.

Meanwhile Lord Lyons had not forgotten his instructions to secure the assent of Mr. Jefferson Davis to the second and third rules of the Declaration of Paris.

On the 5th of July he sent instructions to Mr. Bunch, British Consul at Charleston, to "obtain from the existing government in those [the insurgent] States securities concerning the [75] proper treatment of neutrals."[1] He inclosed a copy of *Lord Russell's 136. He advised Mr. Bunch not to go to Richmond, but to communicate through the governor of the State of South Carolina; and he accompanied this with "a long private letter on the same subject."[2] The nature of that private letter may be gathered from what Mr. Bunch did.

Negotiations at Richmond.

He put himself and his French colleague at once in communication with a gentleman who was well qualified to serve his purpose, but who was not the governor of South Carolina. They showed to this agent Lord John Russell's dispatch to Lord Lyons, and Lord Lyons's official and private letters to Mr. Bunch, and they told him that the step to be taken was one of "very great significance and importance." The agent asked them whether they "were prepared to receive an official act which should be based upon their request, thus giving to the Confederate Government the advantage before the world of such an implied recognition as this would afford."[3] They replied that they "wished a spontaneous declaration;" "that to make this request the declared basis of the act would be to proclaim this negotiation, and the intense jealousy of the United States was such that this would be followed by the revocation of their exequaturs," which they wished to avoid; that could

[1] Vol. I, page 71. [2] Vol. I, page 123. [3] Manuscript in Department of State.

only look upon this step as the initiative toward a recognition, yet the object of their Government being to reach that *recognition [76] gradually, so as not to give good ground for a breach, this indirect way was absolutely necessary." And they added, "All we have a right to ask is that you shall not give publicity to this negotiation; that we nor our Governments should be upon the record."[1]

Their agent, being thus possessed of their views, went to Richmond, with Lord Lyons's letters and Lord Russell's dispatch, and while there he secured the passage, in the insurgent congress, of resolutions partially draughted by Mr. Jefferson Davis, which declared their purpose to observe principles toward neutrals similar to the second and third rules of the Declaration of Paris; that blockades to be binding must be effectual; and that they "*maintained the right of privateering.*"[2] In communicating this result to Lord Lyons, Mr. Bunch said, "*The wishes of Her Majesty's Government would seem to have been fully met, for, as no proposal was made that the Confederate Government should abolish privateering, it could not be expected that they should do so of their own accord, particularly as it is the arm upon which they most rely for the injury of the extended commerce of their enemy.*"[3] The United States think that the tribunal of Arbitration will agree with Mr. Bunch, that it was *not expected that the insurgents would abolish priva- [77] teering.

The Tribunal of Arbitration cannot fail to observe that the propositions which were made in these negotiations to the Government of the United States were communicated to the insurgents, while pains were taken to conceal from the United States the fact that negotiations were opened at Richmond; that Earl Russell refused to receive the assent of the United States to the Declaration of Paris, except upon conditions derogatory to their sovereignty; and that Lord Lyons was instructed to secure the assent of the Government of the United States to the four principles laid down by the Declaration of Paris, while he was instructed, as to the insurgents, to secure their assent only to the second, third, and fourth propositions; and had no instructions to take steps to prevent privateering or to induce the insurgents to accept the first rule in the Declaration of Paris, although it had been agreed that the rules should be maintained as a whole and indivisible, and that the Powers who might accede to them should accede to them as such. The practical effect of this diplomacy, had it been successful, would have been the destruction of the commerce of the United States, (or its transfer to the British flag,) and the disarming a principal weapon of the United *States upon the ocean, should a continuation of this course of [78] insincere neutrality unhappily force the United States into a war. Great Britain was thus to gain the benefit to its neutral commerce of the recognition of the second and third articles, the rebel privateer cruisers were to be protected, and their devastation legalized, while the United States were to be deprived of a dangerous weapon of assault upon Great Britain.

When the whole story of these negotiations was understood by Mr. Adams, he wrote to his Government as follows:[4]

Mr. Adams's comments.

"It now appears plainly enough that he wanted, from the first, to get the first article of the Declaration of Paris out of the negotiation altogether, if he could. But he did not say a word of this to me at the outset, neither was it consistent with the position hereto-

[1] Unpublished manuscript in the Department of State at Washington.
[2] Vol. I, page 137. [3] Vol. I, page 136. [4] Vol. I, page 103.

fore taken respecting the necessity of accepting the declaration 'pure and simple.' What I recollect him to have said on the 18th of May was, that it had been the disposition of his Government, as communicated to Lord Lyons, to agree upon almost any terms, respecting the first article, that might suit the Government of the United States. When reminded of this afterward, he modified the statement to mean that the
[79] article might be omitted altogether. It now *turns out, if we may judge from the instructions, that he did not precisely say either the one thing or the other. Substantially, indeed, he might mean that the general law of nations, if affirmed between the two Governments, would, to a certain extent, attain the object of the first article of the Declaration of Paris, without the adoption of it as a new principle. But he must have known, on the day of the date of these instructions, *which is the very day of his first conference with me*, and four days after the issue of the Queen's Proclamation, that the Government of the United States contemplated, in the pending struggle, neither encouraging privateers nor issuing letters of marque; hence that such a proposition would only complicate the negotiation for no useful purpose whatever. Besides which, it should be borne in mind that the effect, if adopted, would have been, instead of a simple adhesion to the Declaration of Paris, to render it necessary to reopen a series of negotiations for the ratification of it between all the numerous parties to that instrument. Moreover, it is admitted by his Lordship that no powers had been given to make any convention at all—the parties could only agree. Yet, without such powers, what was the value of an agreement? For the Declaration of Paris was, by its very terms, binding only be-
[80] tween parties who acceded to it as *a whole. Her Majesty's Government thus placed themselves in the position of a party which proposes what it gives no authority to perform, and which negotiates upon a basis on which it has already deprived itself of the power to conclude.

"How are we to reconcile these inconsistencies? By the terms of the Queen's Proclamation his lordship must have been aware that Great Britain had released the United States from further responsibility for the acts of its new-made belligerent that was issuing letters of marque, as well as from the possible offenses of privateers sailing under its flag; and yet, when the Government of the United States comes forward and declares its disposition to accept the terms of the Declaration of Paris, pure and simple, the Government of Her Majesty cannot consent to receive the very thing that they have been all along asking for, because it might possibly embarrass them to deny to certain privateers the rights which may accrue to them by virtue of their voluntary recognition of them as belonging to a belligerent power. Yet it now appears that, on the 18th of May, the same Government was willing to reaffirm the law of nations, which virtually involved the very same difficulty on the one hand, while on the other it had given no powers to negotiate a new convention, but contemplated a simple adhesion to the old declaration
[81] on *the part of the United States. The only way by which I can explain these various involutions of policy with a proper regard to Lord Russell's character for straightforwardness, which I have no disposition to impeach, is this: He may have instructed Lord Lyons prior to the 18th of May, the day of our first conference. I certainly received the impression that he had done so. Or he may have written the paper before one o'clock of that day, and thus have referred to the act as a thing completed, though still within his power, in order to get rid of the proposition to negotiate directly here. Of that I do not pretend to judge.

But neither in one case nor in the other was there the smallest intimation of a desire to put in any caveat whatever of the kind proposed in his last declaration. That seems to have been an afterthought, suggested when all other obstacles to the success of a negotiation had been removed.

"That it originated with Lord Russell I cannot credit consistently with my great respect for his character.

"That it was suggested after his proposed consultation with his colleagues, and by some member who had in view the defeat of the negotiation in the interests of the insurgents, I am strongly inclined to believe. The same influence may have been at work in the earlier stages of the business *as well as the latest, and have communi- [82] cated that uncertain and indirect movement which I have commented on, not less inconsistent with all my notions of his lordship's character than with the general reputation of British policy."

The partial purpose which was thus disclosed in the first official act of the Queen's Government, after the issue of the proclamation of neutrality, appears often in the subsequent conduct of that Government.

Contrast between conduct of Great Britain toward the United States, in the Trent affair, and toward violators of British neutrality in the insurgent interest.

Thus, when, a few [illegible] later, an officer of the Navy of the United States had t[illegible] from the deck of a British vessel on the high seas four prominent agents traveling on an errand that, if successful, would result in disaster to the United States, against which they were in rebellion, the course of the British Cabinet indicated an unfriendliness so extreme as to approach to a desire for war. The news of this reached both countries at about the same time. In the United States, while there was some excitement and some manifestation of pleasure, Lord Lyons bears witness to the moderation of the tone of the press.[1] Mr. Seward immediately wrote Mr. Adams to acquaint him that the act of Captain Wilkes was unauthorized, and Mr. Adams communicated this fact to Lord Russell.[2]

*The excitement in England, on the contrary, was intense, and [83] was fanned into animosity by the press. Although without information as to the purpose of the Government of the United States, peremptory instructions were immediately sent to Lord Lyons to demand the release of the four gentlemen, and to leave Washington with all the members of the legation, if the demand was not complied with in seven days.[3]

In anticipation of a refusal, vessels of war were hurriedly fitted out at the naval stations, and troops were pressed forward to Canada. In the midst of this preparation Lord Russell received from Mr. Adams official information that the act had not been authorized by the Government of the United States; but this intelligence was suppressed, and public opinion was encouraged to drift into a state of hostility toward the United States. The arming continued with ostentatious publicity; the warlike preparations went on, and the peremptory instructions to Lord Lyons were neither revoked nor in any sense modified.

Contrast this conduct of Great Britain with reference to a violation of British sovereignty that had not been authorized or assumed by the Government of the United States, and that, to say the least, could be plausibly defended by reference to *the decisions of Sir Wil- [84]

[1] Lord Lyons to Earl Russell, Nov. 25, 1861, Blue Book No. 5, North America, 1862, page 10.
[2] Earl Russell to Lord Lyons. Same, page 11.
[3] Earl Russell to Lord Lyons. Blue Book No. 5, North America, 1862, page 3.

liam Scott,[1] with its course concerning the open, undisguised, oft-repeated, flagrant, and indefensible violations of British sovereignty by the agents of the insurgents in Liverpool, in Glasgow, in London, in Nassau, in Bermuda, it may almost be said wherever the British flag could give them shelter and protection. When the information as to the Florida was conveyed to Her Majesty's Principal Secretary of State for Foreign Affairs, he interposed no objection to her sailing from Liv-
[85] erpool. When the overwhelming *proof of the complicity of the Alabama was laid before him, he delayed to act until it was too late, and then, by his neglect to take notice of the notorious criminals, he encouraged the guilty Laird to construct the two rebel rams—the keel of one of them being laid on the same stocks from which the Alabama had just been launched.[2] When the evidence of the character and destination of those rams was brought to his notice, he held it for almost two months, although they were then nearly ready to go to sea, and then at first refused to stop them. Wiser and more just counsels prevailed four days later.[3] And when Mr. Adams, under instructions from his Government, transmitted to Earl Russell convincing proof of "a deliberate attempt to establish within the limits of this kingdom [Great Britain] a system of action in direct hostility to the Government of the United States,"[4] embracing "not only the building and fitting out of several ships of war under the direction of agents especially commissioned for the purpose, but the preparation of a series of measures under the same auspices for the obtaining from Her Majesty's subjects the pecuniary means essential to the execution of those hostile projects,"[5] Lord Russell refused to see in the inclosed papers
[86] any *evidence of those facts worthy of his attention, or of the action of Her Majesty's Government.[6]

It is not surprising that the consistent course of partiality toward the insurgents, which this Minister evinced throughout the struggle, should have drawn from Mr. Adams the despairing assertion that he was "permitting himself to be deluded by what I cannot help thinking the willful blindness and credulous partiality of the British authorities at Liverpool. *From experience in the past I have little or no confidence in any application that may be made of the kind.*"[7] The prob-

[1] The Atlanta, 6 Charles Robinson's Reports, page 440. On the receipt of the news in London, the Times of November 28, 1861, published a leading article which contained some statements worthy of note. Among other things it said: "Unwelcome as the truth may be, it is nevertheless a truth, that we have ourselves established a system of International Law which now tells against us. In high-handed and almost despotic manner we have, in former days, claimed privileges over neutrals which have at different times banded all the maritime powers of the world against us. We have insisted even upon stopping the ships of war of neutral nations, and taking British subjects out of them; and an instance is given by Jefferson in his Memoirs in which two nephews of Washington were impressed by our cruisers as they were returning from Europe, and placed as common seamen under the discipline of ships of war. We have always been the strenuous asserters of the rights of belligerents over neutrals, and the decisions of our courts of law, as they must now be cited by our law officers, have been in confirmation of these unreasonable claims, which have called into being confederations and armed neutralities against us, and which have always been modified in practice when we were not supreme in our dominion at sea. Owing to these facts the authorities which may be cited on this question are too numerous and too uniform as to the right of search by belligerent ships of war over neutral merchant vessels to be disputed. * * * * * *

"It is, and it always has been, vain to appeal to old folios and bygone authorities in justification of acts which every Englishman and every Frenchman cannot but feel to be injurious and insulting." See also the case of Henry Laurens, Dip. Cor. of Revolution, Vol. I, page 708, *et seq.*

[2] Mr. Dudley to Mr. Seward, Vol. II, page 315. [3] Vol. II, page 363.
[4] Vol. I, page 562. [5] Vol. I, page 562. [6] Vol. I, page 578. [7] Vol. I, page 529.

able explanation of Lord Russell's course is to be found in his own declaration in the House of Lords: "There may be one end of the war that would prove a calamity to the United States and to the world, and especially calamitous to the negro race in those countries, and that would be the subjugation of the South by the North."[1] He did not desire that the United States should succeed in their efforts to obtain that result. The policy of Great Britain, under his guidance, but for the exertions and sacrifices of the people of the United States, might have prevented it.

Mr. Rolin-Jacquemyns on the British neutrality.

The insincere neutrality which induced the Cabinet of London to hasten to issue the Queen's Proclamation upon the eve of the day that Mr. *Adams was to arrive in London, and which prompted the counselings with France, [87] and the tortuous courses as to the Declaration of the Congress of Paris which have just been unraveled, has been well described by Mr. Rolin-Jacquemyns: "L'idéal du personage *neutrarum partium*, c'est le juge qui, dans l'apologue de l'huitre et les plaideurs, avale le contenu du mollusque, et adjuge les écailles aux deux belligérents. Il n'est d'aucun parti, mais il s'engraisse scrupuleusement aux dépens de tous deux. Une telle conduite de la part d'un grand peuple peut être aussi conforme aux précédents que celle du vénérable magistrat dont parle la fable. Mais quand elle se fonde sur une loi positive, sur une règle admise, c'est une preuve que cette règle est mauvaise, comme contraire à la science, à la dignité et à la solidarité humaine."[2]

This feeling of personal unfriendliness toward the United States in the leading members of the British Government continued during a long portion or the whole of the time of the commission or omission of acts hereinafter complained of.

Proof of unfriendly feeling of members of the British Cabinet.

Thus, on the 14th day of October, in the year 1861, Earl Russell[3] said, in a public speech made at Newcastle: "We now see the two parties (in the *United States) con- [88] tending together, not upon the question of slavery, though that I believe was probably the original cause of the quarrel, not contending with respect to free trade and protection, but contending, as so many States in the Old World have contended, the one side for empire and the other for independence. [Cheers.] Far be it from us to set ourselves up as judges in such a contest. But I cannot help asking myself frequently, as I trace the progress of the contest, to what good end can it tend? [Hear! Hear!] Supposing the contest to end in the reunion of the different States; supposing that the South should agree to enter again the Federal Union with all the rights guaranteed to her by the Constitution; should we not then have debated over again the fatal question of slavery, again provoking discord between North and South? * * * But, on the other hand, supposing that the Federal Government completely conquer and subdue the Southern States; supposing that be the result of a long military conflict and some years of civil war; would not the national prosperity of that country, to a great degree, be destroyed? * * * If such are the unhappy results which alone can be looked forward to from the reunion of these different parts of the North American States, is it not then our duty, though our voice, and, indeed, *the voice of any one in this [89] country, may be little listened to—is it not the duty of men who

[1] Vol. IV, page 535.

[2] De la néutralité de la Grande-Bretagne pendant la guerre civile américaine, d'aprés M. Montague Bernard, par. G. Rolin-Jacquemyns, page 13.

[3] London Times, October 16, 1861.

were so lately fellow-citizens—is it not the duty of men who profess a regard for the principles of Christianity—is it not the duty of men who wish to preserve in perpetuity the sacred inheritance of liberty, to endeavor to see whether this sanguinary conflict cannot be put an end to?"

Mr. Gladstone also spoke at Newcastle on the 7th day of October, 1862. It is scarcely too much to say that his language, as well as much of the other language of members of Her Majesty's Government herein quoted, might well have been taken as offensive by the United States. He said:[1] "We may have our own opinions about slavery; we may be for or against the South; but there is no doubt that Jefferson Davis and other leaders of the South have made an army, They are making, it appears, a navy; and they have made what is more than either—they have made a nation. [Loud cheers.] * * * We may anticipate with certainty the success of the Southern States so far as regards their separation from the North. [Hear! Hear!] I cannot but believe that that event is as certain as any event yet future and contingent can be." [Hear! Hear!]

[90] *In a debate in the House of Lords on the 5th of February, 1863, Lord Russell said:[2]

"There is one thing, however, which I think may be the result of the struggle, and which, to my mind, would be a great calamity. That is the subjugation of the South by the North. If it were possible that the Union could be re-formed; if the old feelings of affection and attachment toward it could be revived in the South, I, for one, would be glad to see the Union restored. If, on the other hand, the North were to feel that separation was finally decreed by the events of the war, I should be glad to see peace established upon those terms. But there may be, I say, one end of the war that would prove a calamity to the United States and to the world, and especially calamitous to the negro race in those countries, and that would be the subjugation of the South by the North."

In a spirited debate in the House of Commons on the 27th of March, 1863, Mr. Laird, the builder of the Alabama, and of the rams which were afterward seized, arose and attempted to justify his course in a speech which was received with prolonged cheering and satisfaction by a large portion of the House. Among other things which he then

[91] said, and which were received as *expressive of the views and sentiments of those who cheered him, was the following:[3]

"I will allude to a remark which was made elsewhere last night—a remark, I presume, applying to me, or to somebody else, which was utterly uncalled for. [Hear!] I have only to say that I would rather be handed down to posterity as the builder of a dozen Alabamas than as the man who applies himself deliberately to set class against class [loud cheers] and to cry up the institutions of another country, which, when they come to be tested, are of no value whatever, and which reduced liberty to an utter absurdity." [Cheers.]

Two years later, on the 13th day of March, 1865, the course of this member of the British House of Commons, and this extraordinary scene, were thus noticed by Mr. Bright:[4]

"Then I come to the last thing I shall mention—to the question of the ships which have been preying upon the commerce of the United States. I shall confine myself to that one vessel, the Alabama. She was built in this country; all her munitions of war were from this country; almost every man on board her was a subject of Her Majesty.

[1] London Times, October 9, 1862.
[2] Vol. IV, page 535.
[3] London Times, March 28, 1863.
[4] Vol. V, page 641.

She sailed from one of our chief ports. She is reported to have been built by a *firm in whom a member of this House was, and, [92] I presume is, interested. Now, sir, I do not complain. I know that once, when I referred to this question two years ago, when my honorable friend, the member for Bradford, brought it forward in this House, the honorable member for Birkenhead [Mr. Laird] was excessively angry. I did not complain that the member for Birkenhead had struck up a friendship with Captain Semmes, who may be described as another sailor once was of similar pursuits, as being 'the mildest mannered man that ever scuttled ship.' Therefore I do not complain of a man who has an acquaintance with that notorious person, and I do not complain, and did not then, that the member for Birkenhead looks admiringly upon the greatest example which men have ever seen of the greatest crime which men have ever committed. I do not complain even that he should applaud that which is founded upon a gigantic traffic in living flesh and blood, which no subject of this realm can enter into without being deemed a felon in the eyes of our law and punished as such. But what I do complain of is this: that the honorable gentleman, the member for Birkenhead, a magistrate of a county, a deputy lieutenant—whatever that may be—a representative of a constituency, and having a seat in this ancient and honorable assembly—that *he should, as [93] I believe he did, if concerned in the building of this ship, break the law of his country, driving us into an infraction of International Law, and treating with undeserved disrespect the Proclamation of Neutrality of the Queen. I have another complaint to make, and in allusion to that honorable member. It is within your recollection that when on the former occasion he made that speech and defended his course, he declared that he would rather be the builder of a dozen Alabamas than do something which nobody had done. That language was received with repeated cheering from the opposition side of the House. Well, sir, I undertake to say that that was at least a very unfortunate circumstance, and I beg to tell the honorable gentleman that at the end of the last session, when the great debate took place on the question of Denmark, there were many men on this side of the House who had no objection whatever to see the present Government turned out of office, for they had many grounds of complaint against them; but they felt it impossible that they should take the responsibility of bringing into office the right honorable member for Buckinghamshire or the party who could utter such cheers on such a subject as that."

On the 27th of March, 1863, in a debate in the *House of Com- [94] mons on the fitting out of these piratical cruisers, Lord Palmerston said:[1]

"There is no concealing the fact, and there is no use in disguising it, that whenever any political party, whether in or out of office, in the United States, finds itself in difficulties, it raises a cry against England as a means of creating what, in American language, is called 'political capital.' That is a practice, of course, which we must deplore. As long as it is confined to their internal affairs we can only hope that, being rather a dangerous game, it will not be carried further than is intended. When a government or a large party excite the passions of one nation against another, especially if there is no just cause, it is manifest that such a course has a great tendency to endanger friendly relations between the two countries. We understand, however, the object of these proceedings in the present instance, and therefore we do not feel that irri-

[1] Vol. IV, page 530.

tation which might otherwise be excited. But if this cry is raised for the purpose of driving Her Majesty's Government to do something which may be contrary to the laws of the country, or which may be derogatory to the dignity of the country, in the way of altering our laws for
[95] the purpose of pleasing another gov*ernment, then all I can say is that such a course is not likely to accomplish its purpose."

On the 30th of June, 1863, Mr. Gladstone, in the course of a long speech, said:[1]

"Why, sir, we must desire the cessation of this war. No man is justified in wishing for the continuance of a war unless that war has a just, an adequate, and an attainable object, for no object is adequate, no object is just, unless it also be attainable. We do not believe that the restoration of the American Union by force is attainable. I believe that the public opinion of this country is unanimous upon that subject. [No!] Well, almost unanimous. I may be right or I may be wrong—I do not pretend to interpret exactly the public opinion of the country. I express in regard to it only my private sentiments. But I will go one step further, and say I believe the public opinion of this country bears very strongly on another matter upon which we have heard much, namely, whether the emancipation of the negro race is an object that can be legitimately pursued by means of coercion and bloodshed. I do not believe that a more fatal error was ever committed than when men—of high intelligence I grant, and of the sincerity of whose philanthropy I, for one, shall not venture to whisper the smallest doubt—
[96] *came to the conclusion that the emancipation of the negro race was to be sought, although they could only travel to it by a sea of blood. I do not think there is any real or serious ground for doubt as to the issue of this contest."

In the same debate, Lord Palmerston, with an unusual absence of caution, lifted the veil that concealed his feelings, and said:[2]

"Now, it seems to me that that which is running in the head of the honorable gentleman, [Mr. Bright,] and which guides and directs the whole of his reasoning, is the feeling, although perhaps disguised to himself, that the Union is still in legal existence; that there are not in America two belligerent parties, but a legitimate government and a rebellion against that government. Now, that places the two parties in a very different position from that in which it is our duty to consider them."

As late as the 9th of June, 1864, Earl Russell said[3] in the House of Lords:

"It is dreadful to think that hundreds of thousands of men are being slaughtered for the purpose of preventing the Southern States from acting on those very principles of independence which in 1776 were asserted by the whole of America against this country. Only a few years
[97] ago the *Americans were in the habit, on the 4th of July, of celebrating the promulgation of the Declaration of Independence, and some eminent friends of mine never failed to make eloquent and stirring orations on those occasions. I wish, while they keep up a useless ceremony—for the present generation of Englishmen are not responsible for the War of Independence—that they had inculcated upon their own minds that they should not go to war with four millions, five millions, or six millions of their fellow-countrymen who want to put the principles of 1776 into operation as regards themselves."

The United States have thus presented for the consideration of the

[1] Vol. V, page 666. [2] Vol. V, page 695. [3] Vol. V, page 507.

Tribunal of Arbitration the publicly expressed sentiments of the leading members of the British Cabinet of that day. Lord Palmerston was the recognized head of the Government. Earl Russell, who, at the commencement of the insurrection, sat in the House of Commons as Lord John Russell, was during the whole time Her Majesty's Principal Secretary of State for Foreign Affairs, specially charged with the expression of the views and feelings of Her Majesty's Government on these questions. Both were among the oldest and most tried statesmen of Europe. Mr. Gladstone, the present distinguished chief of the Government, was then the *Chancellor of the Exchequer; and [98] Lord Campbell, well known in both hemispheres as a lawyer and as a lover of letters, sat upon the woolsack when the contest began. Lord Westbury, who succeeded him in June, 1861, was the chief counselor of the policy pursued by the British Goverment. These gentlemen were entitled to speak the voice of the governing classes of the Empire; and the United States have been forced with sincere regret to the conviction that they did express the opinions and wishes of much of the cultivated intellect of Great Britain.

The United States would do great injustice, however, to the sentiments of their own people did they fail to add, that some of the most eloquent voices in Parliament were raised in behalf of the principles of freedom which they represented in the contest; and that members of the governing classes most elevated in rank and distinguished in intellect, and a large part of the industrial classes, were understood to sympathize with them. They cannot, however, shut their eyes to the fact, and they must ask the Tribunal of Arbitration to take note, that, with the few exceptions referred to, the leading statesmen of that country, and nearly the whole periodical press and other channels through which the British cultivated intellect is accustomed to influence public affairs, *sustained the course of the existing Government in the [99] unfriendly acts and omissions which resulted so disastrously to the United States. The United States complain before this Tribunal only of the acts and omissions of the British Government. They refer to the expressions and statements from unofficial sources as evidence of a state of public opinion, which would naturally encourage the members of that Government in the policy and acts of which the United States complain.

It is not worth while to take up the time of the Tribunal of Arbitration, by an inquiry into the reasons for this early and long-continued unfriendliness of the British Government, toward a goverment which was supposed to be in sympathy with its political and moral ideas, and toward a kindred people with whom it had long maintained the attitude of friendship. They may have been partly political, as expressed in Parliament by an impetuous member, who spoke of the bursting of the bubble republic,[1] (for which he received a merited rebuke from Lord John Russell)[2]; or they may have been those declared without rebuke at a later date in the House of Commons by the present Marquis of Salisbury, then Lord Robert Cecil, when he said[3] that "they [the people of the South*ern States] were the natural allies of this [100] country, as great producers of the articles we needed and great consumers of the articles we supplied. The North, on the other hand, kept an opposition-shop in the same departments of trade as ourselves;" or they may have been those announced by Earl Russell last year, when

[1] Hansard, 3d series, Vol. 163, page 134.
[2] Same, page 276. [3] Vol. V, page 671.

saying,[1] "It was the great object of the British Government to preserve for the subject the security of trial by jury, and for the nation the legitimate and lucrative trade of ship-building."

Without pursuing an inquiry in this direction, which, at the best, would be profitless, the United States invite the careful attention of the Arbitrators to the facts which appear in the previous pages of this Case. In appoaching the consideration of the third branch of the subjects herein discussed, in which the United States will endeavor to show that Great Britain failed in her duties toward the United States—as those duties will be defined in the second branch thereof—the Tribunal of Arbitration will find in these facts circumstances which could not but influence the minds of the members of Her Majesty's Government, and induce them to look with disfavor upon efforts to repress the attempts of British subjects, and of *other persons, [101] to violate the neutrality of British soil and waters in favor of the rebels. Conclusions.

Some of the members of the British Government of that day seem to have anticipated the conclusion which must inevitably be drawn from their acts, should the injuries and wrongs which the United States have suffered ever be brought to the adjudication of an impartial tribunal.

Lord Westbury (appointed Lord High Chancellor on the death of Lord Campbell, in June, 1861) declared, in the House of Lords, in 1868, that "*the animus with which the neutral Powers acted was the only true criterion.* The neutral Power might be mistaken; it might omit to do something which ought to be done, or direct something to be done which ought not to be done; but the question was whether, from beginning to end, it had acted with sincerity and with a real desire to promote and preserve a spirit of neutrality. * * * He [Mr. Seward] said, in effect, 'Whether you were a sincere and loyal neutral was the question in dispute, and that must be judged from a view of the whole of your conduct. I do not mean to put it merely upon the particular transaction relative to the Alabama. I insist upon it in that case undoubtedly; but I contend that, from beginning to end, you had an undue preference and predilection for the Confederate States; *that you [102] were therefore not loyal in your neutrality; and I appeal to the precipitancy with which you issued your Proclamation, thereby involving a recognition of the Confederate States as a belligerent power, as a proof of your insincerity and want of impartial attention.' And now, could we prevent him from using that document for such a purpose? How unreasonable it was to say, when you go into arbitration, you shall not use a particular document, even as an argument upon the question whether there was sincere neutrality or not."[2]

Such is the use which the United States ask this Tribunal to make of the foregoing evidence of the unfriendliness and insincere neutrality of the British Cabinet of that day. When the leading members of that Cabinet are thus found counseling in advance with France to secure a joint action of the two governments, and assenting to the declaration of a state of war between the United States and the insurgents, before they could possibly have received intelligence of the purposes of the Government of the United States; when it is seen that the British Secretary of State for Foreign Affairs advises the representatives of the insurgents as to the course to be *pursued [103] to obtain the recognition of their independence, and at the same

[1] Earl Russell's Speeches and Dispatches, Vol. II, page 266.
[2] Hansard's Parliamentary Debates, 3d series, Vol. CXCI, pages 347, 348.

time refuses to await the arrival of the trusted representative of the United States before deciding to recognize them as belligerents; when he is found opening negotiations through Her Majesty's diplomatic representative at Washington with persons in rebellion against the United States; when various members of the British Cabinet are seen to comment upon the efforts of the Government of the United States to suppress the rebellion in terms that indicate a strong desire that those efforts should not succeed, it is not unreasonable to suppose that, when called upon to do acts which might bring about results in conflict with their wishes and convictions, they would hesitate, discuss, delay, and refrain—in fact, that they would do exactly what in the subsequent pages of this paper it will appear that they did do.

[105] *PART III.

THE DUTIES WHICH GREAT BRITAIN, AS A NEURTAL, SHOULD HAVE OBSERVED TOWARD THE UNITED STATES.

The second branch of the subject, in the order in which the United States desire to present it to the Tribunal of Arbitration, involves the consideration of the duties which Great Britain, as a neutral, should have observed toward the United States during the contest. However inconsiderately and precipitately issued, the Proclamation of Neutrality recognized the obligation, under the law of nations, to undertake the performance of those duties, and it becomes important to have a correct understanding of their character.

The Queen's Proclamation a recognition of obligation under the law of nations.

In attempting to define these duties, it is natural, first, to endeavor to ascertain whether Great Britain itself has, by legislative or official acts, recognized any such obligations; and next to inquire whether the canons of international law, as expounded by publicists of authority, demand of a neutral, the observance of any other or broader rules than have been so recognized. The Un[illegible] States will pursue the examination in this order.

Great Britain has recognized its obligations in various ways.

They find, first, an evidence of Great Britain's conception of its [106] duties as a neutral in the Foreign *Enlistment Act which was enacted in 1819, and was in force during the whole of the Southern rebellion.

Recognized by the Foreign Enlistment Act of 1819.

It must be borne in mind, when considering the municipal laws of Great Britain, that, whether effective or deficient, they are but machinery to enable the Government to perform the international duties which they recognize, or which may be incumbent upon it from its position in the family of nations. The obligation of a neutral state to prevent the violation of the neutrality of its soil is independent of all interior or local law. The municipal law may and ought to recognize that obligation; but it can neither create no destroy it, for it is an obligation resulting directly from International Law, which forbids the use of neutral territory for hostile purpose.[1]

Municipal laws designed to aid a government in performance of international duties.

The local law, indeed, may justly be regarded as evidence, as far as it goes, of the nation's estimate of its international duties; but it is not to be taken as the limit of those obligations in the eye of the law of nations.

It is said by Lord Tenterden, the distinguished Secretary of the British High Commissioners, in his memorandum attached to the report[2] of Her Majesty's Commissioners upon [107] the neutrality law,[3] *that the neutrality law of the United States formed the foundation of the neutrality of England.[4] "The act for the amendment of the neutralty laws," he says, "was

History of Foreign Enlistment Act of 1819.

[1] Ortolan, Diplomatie de la mer, vol. 2, page 215.
[2] Vol. IV, page 79.
[3] Vol. IV, page 93, Appendix No. 3, by Mr. Abbott, now Lord Tenterden.
[4] Vol. IV, page 124.

introduced by Mr. Canning on the 10th of June, 1819, in an eloquent speech, in the course of which he said, 'It surely could not be forgotten that in 1793 this country complained of various breaches of neutrality (though much inferior in degree to those now under consideration) committed on the part of subjects of the United States of America. What was the conduct of that nation in consequence? Did it resent the complaint as an infringement of its independence? Did it refuse to take such steps as would insure the immediate observance of neutrality? Neither. In 1794, immediately after the application from the British Government, the Legislature of the United States passed an act prohibiting, under heavy penalties, the engagement of American citizens in the armies of any belligerent Power. Was that the only instance of the kind? It was but last year that the United States passed an act by which the act of 1794 was confirmed in every respect, again prohibiting the engagement of their citizens in the service of any foreign Power, and pointing distinctly to the service of Spain or the South American Provinces."[1] It appears from the *whole [108] tenor of the debate which preceded the passage of the act that its sole purpose was *to enable the Executive to perform with fidelity the duties toward neutrals which were recognized as imposed upon the Government by the Law of Nations.*

Great Britain bound to perform the duties recognized by that act.

The United States assume that it will be conceded that Great Britain was bound to perform all the duties of a neutral toward the United States which are indicated in this statute. If this obligation should be denied, the United States beg to refer the Tribunal of Arbitration to the declaration of Earl Russell in his communication to Mr. Adams of August 30, 1865, where he[2] "lays down with confidence the following proposition:" "That the Foreign Enlistment Act is intended in aid of the *duties* * * of a neutral nation."[3] They also refer to Lord Palmerston's speech in the House of Commons, July 23, 1863,[4] in which he says: "The American Government have a distinct right to expect that a neutral will enforce its municipal law, if it be in their favor."

Indeed, Great Britain is fully committed to this principle in its dealings with other Powers. Thus, during the Crimean war, Her Majesty's Government, feeling aggrieved at the acts of the Prussian Government in tolerating the furnishing of arms and other contraband of war to Russia, were *advised by the Law Officers of the Crown [109] that they might justly remonstrate against violations of Prussian law.[5]

After these declarations by British authorities, it will scarcely be contended that the United States had not the right to expect, and to demand of Great Britain the performance of the measure of duty recognized by existing municipal laws, however inadequate those laws might be as an expression of international obligations.

Duties recognized by Foreign Enlistment Act of 1819.

The British Foreign Enlistment Act of 1819 consisted of twelve sections, written in the verbiage which the customs of England make necessary in the laws providing for the punishment of crimes. These sections relate to four distinct subjects. First, they repeal all former statutes; secondly, they define the acts which the British legislators regarded as acts which a neutral ought not to permit to be done within its jurisdiction; thirdly, they provide modes for prosecuting persons found guilty of committing the acts

[1] Vol. IV, pages 123, 124.
[2] Vol. III, page 549.
[3] Vol. III, page 550.
[4] Vol. V, page 695.
[5] Earl Granville to Count Bernstorff, September 15, 1870.

which are prohibited by the statute, and they indicate the punishments which may be inflicted upon them when convicted; fourthly, they exempt certain parts of the Empire from the operation of the statute.[1]

[110] *This Tribunal need take no notice of the penal portions of the statute, which affect only the relations between the State and those who owe allegiance to its laws by reason of residence within its territory. The United States will therefore confine themselves to attempting to deduce from the statute the definitions of the principles, and the duties, which are there recognized as obligatory on the nation in its relations with other Powers. The adjudicated cases often disregard the distinction between the duties of a neutral, however defined, and the proceedings in its courts against persons charged as criminals for alleged violations of its laws for the preservation of neutrality. Even some of the best publicists, in referring to this class of decisions, have not always remembered that, while in the former we have only to do with principles of public law, in the latter we are dealing with the evidence necessary for the conviction of an offender. Bearing this distinction in mind, the Tribunal of Arbitration may be able to reconcile many apparently conflicting authorities, and arrive at just conclusions.

The acts which, if committed within the territory of the neutral, are to be regarded as violations of its international duties, are enumerated in the second, fifth, sixth, seventh, and eighth sections of the statute.

[111] *Translating this statutory language into the expressions commonly employed by publicists and writers on International Law, this statute recognizes the following as acts which ought to be prevented within neutral territory during time of war.

1. The recruitment of subjects or citizens of the neutral, to be employed in the military or naval service of a foreign Government or of persons assuming to exercise the powers of government over any part of foreign territory; or the acceptance of a commission, warrant, or appointment for such service by such persons; or the enlisting or agreeing to enlist in such service; the act in each case being done without the leave or license of the Sovereign.

2. The receiving on board a vessel, for the purpose of transporting from a neutral port, persons who may have been so recruited or commissioned; or the transporting such persons from a neutral port. Authority is given to seize the vessels violating these provisions.

3. The equipping, furnishing, fitting out, or arming a vessel, with intent or in order that it may be employed in the service of such foreign Government, or of persons assuming to exercise the powers of government over any part of a foreign country, as a transport or

[112] store-ship, or to *cruise or carry on war against a power with which the neutral is at peace; or the delivering a commission for such vessel, the act in each case being done without the leave or license of the Sovereign.

4. The augmenting the warlike force of such a vessel of war by adding to the number of guns, by changing those on board for other guns, or by the addition of any equipment of war, if such vessel at the time of its arrival in the dominions of the neutral was a vessel of war in the service of such foreign Government, or of such persons, the act being done without the leave or license of the Sovereign.[2]

[1] Vol. IV, page 86.

[2] It may interest the members of the Tribunal of Arbitration to see in this connection an abstract of the acts which are made penal by the United States Neutrality Law of 1818. The law itself will be found in Vol. IV, pages 90–92. The abstract is

Royal Commission to revise Foreign Enlistment Act of 1819.

*During the insurrection, as will be seen hereafter, this act [113] was, by the construction of the English courts, stripped of its effective power. The United States repeatedly and in vain invited Her Majesty's Government to amend it. Although these calls proved abortive during the contest with the South, the appalling magnitude of the injury which had been inflicted by British-built and British-manned cruisers upon the commerce and industry of a nation with which Great Britain was at peace appears to have awakened its senses, and to have impelled it to take some steps toward a change. In January, 1867, the Queen's Commission was issued to some of the most eminent of the British lawyers and judges, authorizing them to inquire into and consider the character, working, and effect of the laws of the Realm, available for the *enforcement of neutrality, during the existence of hostilities be- [114]

taken from President Grant's Proclamation of Neutrality in the late Franco-German war, dated October 8, 1870.

"By the act passed on the 20th day of April, A. D. 1818, commonly known as the 'Neutrality Law,' the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to wit:

"1. Accepting and exercising a commission to serve either of the said belligerents by land or by sea against the other belligerent.

"2. Enlisting or entering into the service of either of the said belligerents as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque, or privateer.

"3. Hiring or retaining another person to enlist or enter himself in the service of either of the said belligerents as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque, or privateer.

"4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

"5. Hiring another person to go beyond the limits of the United States with the intent to be entered into service as aforesaid.

"6. Retaining another person to go beyond the limits of the United States with intent to be enlisted as aforesaid.

"7. Retaining another person to go beyond the limits of the United States with intent to be entered into service as aforesaid. (But the said act is not to be construed to extend to a citizen or subject of either belligerent who, being transiently within the United States, shall, on board of any vessel of war, which, at the time of its arrival within the United States, was fitted and equipped as such vessel of war, enlist, or enter himself, or hire, or retain another subject or citizen of the same belligerent, who is transiently within the United States, to enlist, or enter himself to serve such belligerent on board such vessel of war, if the United States shall then be at peace with such belligerent.)

"8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of either of the said belligerents.

"9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

"10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser, or armed vessel in the service of either of the said belligerents, or belonging to the subjects or citizens of either, by adding to the number of guns of such vessels, or by changing those on board of her for guns of a larger caliber, or by the addition thereto of any equipment solely applicable to war.

"11. Beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territories or dominions of either of the said belligerents."

The Tribunal of Arbitration will also observe that the most important part of the American act is omitted in the British act, namely, *the power conferred by the eighth section on the Executive to take possession of and detain a ship without judicial process, and to use the military and naval forces of the Government for that purpose, if necessary.* Earl Russell is understood to have determined that the United States should, in no event, have the benefit of such a summary proceeding, or of any remedy that would take away the trial by jury.—*Speeches and Dispatches of Earl Russell*, Vol. II, page 266.

tween other States with whom Great Britain might be at peace, and to inquire and report whether any and what changes ought to be made in such laws for the purpose of giving to them increased efficiency, and bringing them into full conformity with international obligations.[1]

That Commission held twenty-four sittings, and finally reported that the old Foreign Enlistment Act of 1819 was capable of improvement, and might be made more efficient by the enactment of several provisions set forth in the report.[2] Report of the Commission.

Among other things the Commission recommended that it be [115] made a statutory offense to "fit *out, arm, *dispatch* or *cause to be dispatched, any ship, with intent or knowledge* that the same shall or will be employed in the military or naval service of any foreign Power in any war then being waged by such Power against the subjects or property of any foreign belligerent Power with whom her Majesty shall not then be at war."[3] It was also proposed to make it a statutory offense to "*build or equip any ship with the intent that the same shall, after being fitted out and armed, either within or beyond Her Majesty's Dominions, be employed as aforesaid;*"[4] and it was proposed that the Executive should be armed with summary powers similar to those conferred upon the President of the United States by the eighth section of the act of 1818. It was further proposed to enact that "in time of war no vessel employed in the military or naval service of any belligerent, which shall have been built, equipped, fitted out, armed, or dispatched contrary to the enactment, should be admitted to any port of Her Majesty's Dominions."[5]

The Tribunal of Arbitration will not fail to observe that these recommendations were made by a board composed of the most eminent judges, jurists, publicists, and statesmen of the Empire, who had been in [116] public life and had participated *in the direction of affairs in Great Britain during the whole period of the Southern rebellion; and that they were made under a commission which authorized these distinguished gentlemen to consider and report what changes ought be made in the laws of the Kingdom, for the purpose of giving to them increased efficiency, *and bringing them into full conformity with the international obligations of England.* The Tribunal of Arbitration will search the whole of that report, and of its various appendices, in vain, to find any indication that that distinguished body imagined, or thought, or believed that the measures which they recommended were not "in full conformity with international obligations." On the contrary, the Commissioners say that, so far as they can see, the adoption of the recommendations will bring the municipal law into full conformity with the international obligations.[6] Viewing their acts in the light of their powers and of their instructions, the United States feel themselves justified in asking the Tribunal to assume that that eminent body regarded the acts which they proposed to prevent by legislation, as forbidden by International Law.

The report of the Commissioners was made in 1868, but was not acted upon until after the breaking out of the late war between Germany and France. On the 9th of August, 1870, [117] Parliament *passed "An act to regulate the conduct of Her Majesty's subjects during the existence of hostilities between foreign States with which Her Majesty is at peace." This act, which may be found The Foreign Enlistment Act of 1870.

[1] Vol. IV, page 79. [2] Vol. IV, page 80. [3] Vol. IV, pages 80, 81.
[4] Vol. IV, page 81. [5] Vol. IV, page 82. [6] Vol. IV, page 82.

in Volume VII,[1] embodies the recommendations of the commissioners which are cited above, except that which excludes a ship which has been illegally built or armed, &c., &c., from Her Majesty's ports.

Judicial construction of that act.

Soon after the enactment of this statute, a vessel called the "International," was proceeded against for an alleged violation of its provisions. The case came before Sir Robert J. Phillimore, one of Her Majesty's Commissioners who signed the report in 1868. In rendering his decision on the 17th of January, 1871, he said: "This statute, passed during the last session, under which the authority of this court is now for the first time evoked, is, in my judgment, very important and very valuable; strengthening the hands of Her Majesty's Government, and *enabling them to fulfill more easily than heretofore that particular class of international obligations which may arise out of the conduct of Her Majesty's subjects toward belligerent Foreign States, with whom Her Majesty is at peace.*"[2]

*These eminent commissioners and this distinguished jurist [118] have chosen their words with the precision which might have been expected of them. They declare that, in the execution of the commission, they have only sought to bring the law of England into harmony with the law of nations. Their functions ceased when they recommended certain changes with that object in view. Parliament then took up the work and adopted their suggestions. Then, as if to prevent all misapprehension, one of the commissioners, acting as a judge, held that the act of 1870 is intended to bring the law of the realm into harmony with the international duties of the Sovereign.

International law is a part of the common law of England.

The United States confidently submit that the new provisions, inserted in the act of 1870, were intended, at least as against the British Government, as a re-enactment of the law of nations, as understood by the United States to be applicable to the cases of the Alabama, and other ships of war constructed in England for the use of the insurgents.

They conceive that Great Britain is committed to the doctrines therein stated, not merely by the articles of International Law expressed in its statutes, but also by the long-settled Common Law of England confirmed by acts of Parliament.

*The act of 7 Anne, ch. 12, enacted in consequence of the violation of the law of nations by the arrest for debt of the Ambassador of the Czar, Peter the Great, in London, is prominent in the history of the legislation of Great Britain.[3] [119]

Lord Mansfield, commenting on this act in the case of Triquet *vs.* Bath, 3 Burrow's Reports, p. 148, says that this act was but declaratory. All that is new in this act is the clause which gives a summary jurisdiction for the punishment of the infraction of the law. He further remarks that the Ambassador, who had been arrested, could have been discharged on motion. This act of Parliament was passed as an apology from the nation. It was sent to the Czar, finely illuminated, by an Ambassador Extraordinary, who made the national excuses in an oration. "The act was not occasioned by any doubt whether the law of nations, particularly the part relative to public ministers, was not part of the law of England, and not intended to vary an iota from it." Lord Mansfield further says, in reference to the case of Brevot *vs.* Barbot, that

[1] Vol. VII, page 1.

[2] London Times, January 18, 1871. See also Admiralty and Ecclesiastical Reports, Vol. 3, page 332. See also Report of the Debate on the Foreign Enlistment Act in the House of Commons, in the London Times of August 2, 1870.

[3] See Phillimore's International Law, vol. 2, ch. 8, section 194.

Lord Talbot declared "that the law of nations, in its full extent, was part of the law of England;" and adds, "I remember, too, Lord Hardwick declared his opinion to the same effect, and denying that Lord
[120] Chief *Justice Holt ever had any doubt as to the law of nations being part of the law of England, upon the occasion of the arrest of the Russian Ambassador."[1]

To the same effect is the remark of Lord Tenterden, when he says "that the act of Anne is only declaratory of the common law. It must, therefore, be construed according to the common law, of which the law of nations must be deemed a part."[2]

Blackstone states the doctrine in general terms as follows: "The law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world, in order to decide all disputes, to regulate all ceremonies and civilities, and to insure the observance of justice and good faith, in that intercourse which must frequently occur between two or more independent States, and the individuals belonging to each.

* * * * * *

"In arbitrary States this law, wherever it contradicts, or is not provided for by the municipal law of the country, is enforced by the
[121] Royal Power; but since in England no Royal Power *can introduce a new law or suspend the execution of the old, therefore the law of nations (whenever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law of the land. And those acts of parliament which have from time to time been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the Kingdom; *without which it must cease to be a part of the civilized world.*"[3]

In the presence of these authorities it cannot be doubted that the law of nations enters integrally into the common law of England, and that any enactment by Parliament on this point derives force only from its conformity with the law of nations, having no virtue beyond that, except in so far as such enactment may afford means for the better enforcement of that law within the realm of England.

That eminent judge and jurist, Lord Stowell, even goes so far as to say that, while an act of Parliament can affirm the law of nations, it cannot contradict it or disaffirm it to any effect as respects foreign Governments.[4]

[122] *Lord Stowell's position is in perfect accordance with the observation of Lord Mansfield, in another case, viz: Heathfield *vs.* Chilton, that, "The privileges of public ministers and their retinue depend upon the law of nations, which is part of the common law of England. And the act of Parliament of 7 Anne, ch. 12, did not intend to alter, nor can alter the law of nations."[5]

Duties recognized by the Queen's Proclamation of Neutrality.

The next act of the British Government to which the United States invite the attention of the Tribunal, as showing to some extent that Government's sense of its duties toward the United States, is the Proclamation of Neutrality of May 13, 1861, already alluded to.

[1] See further 1 Black. Com., pp. 43, 354; 1 Woodson's Lectures, p. 31.
[2] Novello *vs.* Toogood, 1 Barnwell and Creswell's Reports, 562.
[3] Blackstone's Com., vol. 4, ch. 5. See also Lord Lyndhurst's opinion, *ante*, page 61.
[4] The Louis, Dodson's Admiralty Reports, vol. 2, p. 210.
[5] Heathfield *vs.* Chilton, 4 Burrows, p. 2016. This observation of Lord Mansfield is cited and adopted by Phillimore, vol. 3, p. 541.

It is not claimed that a belligerent has the right, by the custom of nations, to require a neutral to enforce in its favor an executive Proclamation of the neutral, addressed to its own citizens or subjects; but it is maintained that, as between Great Britain and the United States, there is a binding precedent for such a request to Great Britain. In 1793, during General Washington's administration, the representative of Great Britain in the United States pointed out to Mr. Jefferson, who was then Secretary of State, acts which were deemed by Her Britannic Majesty's Government *to be "breaches of neutrality," [123] done "in contravention of the President's Proclamation" of Neutrality, and he invited the United States to take steps for the repression of such acts, and for the restoration of captured prizes. It appears that the United States complied with these requests.[1]

Relying, therefore, upon this precedent, established against Great Britain, rather than upon a right under the laws of nations, which can be asserted or maintained against the United States or against other nations, the United States invite the attention of the Tribunal to the fact that two principles, in addition to those already deduced from the Foreign Enlistment Act of 1819, appear to be conceded by the Proclamation of May 13, 1861:

1. That it is the duty of a neutral to observe strict neutrality as to both belligerents during hostilities.

Definition of neutrality.

Neutrality is defined by Phillimore "to consist in two principal circumstances: 1. Entire abstinence from any participation in the war; 2. Impartiality of conduct toward both belligerents." "This *abstinence* and this *impartiality* must be combined in the character of a *bona-fide* neutral."[2]

Bluntschli defines it thus: La neutralité est la *non-participation* à la guerre. Lorsque l'état neutre soutient un des belligérants, il prend *part à la guerre, en faveur de celui qu'il soutient, et dès [124] lors *il cesse d'être neutre.* L'adversaire est autorisé à voir dans cette participation un acte d'hostilité. Et cela n'est pas seulement vrai quand l'état neutre livre lui-même des troupes ou des vaissoeux des guerre, mais aussi lorsqu'il prête à un des belligérants un appui médiat en permettant, *tandis qu'il pourrait l'empêcher*, que, de son territoire neutre, on envoie des troupes ou des navires de guerre."[3]

Hautefeuille says: "Cet état nouveau impose aux neutres des devoirs particuliers: ils doivent s'abstenir complètement de toute acte d'immixion aux hostilités et garder une stricte impartialité envers les deux belligérants. * * * L'impartialité consiste à traiter les deux belligérants de la même manière et avec une parfaite égalité dans tout ce qui concerne les relations d'état à état."[4]

Lord Stowell says: "The high privileges of a neutral are forfeited by the abandonment of that perfect indifference between the contending parties, in which the essence of neutrality consists.[5]

Calvo collects or refers to the definitions given by the various writers on International Law, and expresses a preference for Hubner's: "La mas *aceptable es la de Hubner, por la claridad y precision [125] con que fija, no solo la situacion de las naciones pacíficas, sino la extension que tiene sobre ellas el status belli."[6]

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[1] Vol. IV, pages 94–102.
[2] 3 Phillimore, Ch. IX.
[3] Opinion impartiale sur la question de l'Alabama. Berlin, 1870, page 22.
[4] Nécessité d'une loi maritime pour régler les rapports des neutres est des belligérants. Paris, 1862, page 7.
[5] The Eliza Ann, (1 Dodson's Reports, 244.)
[6] Calvo Derecho Internacional, tom. 2, page 151, § 603.

2. The proclamation also distinctly recognizes the principle that the duties of a neutral in time of war do not grow out of, and are not dependent upon, municipal laws. Offenders against the provisions of the act are therein expressly forewarned that such offenses will be "acts in derogation of their duty as subjects of a neutral sovereign in the said contest, *or in violation or contravention of the law of nations in that behalf.*

Duties recognized by instructions to British officials during the insurrection.

The next acts of the British Government, indicating its sense of its duties as a neutral toward the United States, to which the attention of the Tribunal is invited, are the several instructions issued during the contest, for the regulation of the official conduct of its naval officers and of its colonial authorities toward the belligerents.[1]

These various instructions state or recognize the following principles and rules:

1. A belligerent may not use the harbors, ports, coasts, and waters of a neutral in aid of its warlike purposes, or as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment.

[126] *2. Vessels of war of the belligerents may be required to depart from a neutral port within twenty-four hours after entrance, except in case of stress of weather, or requiring provisions or things for the crew, or repairs; in which case they should go to sea as soon as possible after the expiration of the twenty-four hours.

3. The furnishing of supplies to a belligerent vessel of war in a neutral port may be prohibited, except such as may be necessary for the subsistence of a crew, and for their immediate use.

4. A belligerent steam-vessel of war ought not to receive in a neutral port more coal than is necessary to take it to the nearest port of its own country, or to some nearer destination, and should not receive two supplies of coal from ports of the same neutral within less than three months of each other.

Correspondence between the two Governments in 1793, 1794.

The attention of the Tribunal is further invited to the official opinions expressed by the representative of Great Britain in the United States during the administration of President Washington upon the duties of a neutral toward a belligerent; and to the acts of the Government of the United States during that administration, preceding, and accompanying, and subsequent to those expressions of opinion; and to the treaty concluded between the United States and Great Britain in 1794.

[127] *The first acts took place in the United States in 1793, a year before the passage of the first American Neutrality Law, when the United States had nothing but the law of nations and the sense of their duties as a neutral to guide them.

The envoy from the new French Republic, M. Genet, arrived at Charleston, in the United States, early in April, 1793, with the purpose of making the ports and waters of the country the base of hostile operations against Great Britain. The steps which he took are fairly referred to by Lord Tenterden in the memorandum already cited.[2]

The Capital was then at Philadelphia, several hundred miles distant from Charleston, with few regular means of communication between the two towns. The Government of the United States was in its early infancy. Four years only had passed since it was originated, and it had not been tested whether the powers confided to it would prove sufficient

[1] Vol. IV, page 175, *et seq.*

[2] Vol. IV, page 93, *et seq.*

for an emergency that might arise in its Foreign Relations. It had neither navy, nor force that could be converted into one, and no army on the sea-coast; and it was obliged to rely upon, and did actually call out, the irregular militia of the States to enforce its orders.

Under the directions of M. Genet, privateers were fitted out, manned, and commissioned, from *Charleston and other ports, [128] before he reached Philadelphia, and prizes were brought in by them. On the 22d of April, 1793, M. Genet not having yet reached Philadelphia, President Washington issued his celebrated proclamation, the first of its kind, in which he declared that "the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial toward the belligerent Powers;" and he warned all persons against "committing, aiding, or abetting hostilities against any of the said Powers."[1]

The news of the coming of M. Genet had preceded his arrival at Philadelphia. On the 17th of May, 1793, Mr. Hammond, the then British Minister, made complaint of his acts, and called attention to the fact that privateers were fitting in South Carolina, which he conceived to be "breaches of that neutrality which the United States profess to observe, and direct contraventions of the Proclamation."

He invited the Government to "pursue such measures as to its wisdom may appear the best calculated for repressing such practices in future, and for restoring to their rightful owners any captures which these particular privateers may *attempt to bring into any of the [129] ports of the United States."[2]

Two days before the receipt of that representation, Mr. Jefferson had already complained to the French Minister of these proceedings, and M. Genet, on his arrival, claimed to justify himself by the existing treaties between France and the United States.

Other cases subsequently occurred, in which Mr. Hammond intervened; for an account of which the Tribunal of Arbitration is respectfully referred to Lord Tenterden's memorandum.

The subject of Mr. Hammond's complaints and his demand for the restoration of the captured vessels were under consideration until the 5th of June, 1793, when answers were given simultaneously to M. Genet and to Mr. Hammond.

The former was told that the United States could not tolerate these acts of war within their territories. The latter was told that effectual measures would be taken to prevent a repetition of the acts complained of; but as to restoring the prizes, it could not be done for two reasons: first, because if commissions to the privateers were valid and the captures were legal, the Executive of the United States had no control over them; and if they were illegal the owners had a sufficient *remedy in the national courts; secondly, because the acts com- [130] plained of had been done at a remote port, without any privity of the United States, "impossible to have been known, and therefore impossible to have been prevented by the Government."[3]

It is worthy of note that the owners did resort to the courts, and that prizes taken by these privateers were restored by judicial process.[4]

The Government of General Washington determined, however, as it had been informed of these attempts at violating the sovereignty of the nation, that it was the duty of the United States not only to repress them in future, but to restore prizes that might be captured by vessels

[1] Vol. IV, page 94. [2] Vol. IV, page 95. [3] Vol. IV, page 97.
[4] Dana's Wheaton, section 439, note 215, page 536. This note, which contains an exhaustive review of the American policy, may be found in Vol. VII, page 11.

thus illegally fitted out, manned, equipped, or commissioned within the waters of the United States; or, if unable to restore them, then to make compensation for them.

The reasons for this course are stated in a letter from Mr. Jefferson to Mr. Hammond, dated the 5th of September, 1793.[1]

The United States Government also, on the 4th of August, 1793, issued instructions to collectors of the customs,[2] which were in-
[131] tended to enforce *the President's Proclamation of April 22. We have the authority of Lord Tenterden for saying that the result of the publication of those instructions was, that the system of privateering was, generally speaking, suppressed.[3]

From this examination, it appears that a well conceived and extended system of violating the neutrality of the United States, when they were weak and the powers confided to their Executive were untried, was put in operation in April by the representative of one of the powerful nations of Europe, and was suppressed before August without legislation; and also that *the United States undertook to make compensation for the injuries resulting from violations that had taken place where they had failed to exert all the means in their power to prevent them.*

It was subsequently agreed between the two Governments[4] that in cases where restitution of the prizes should be impossible, the amount of the losses should be ascertained by a method similar to that provided by the Treaty of Washington, and that a money payment should be made by the United States to Great Britain in lieu of restitution. The examination of these claims extended
[132] *over a period of some years, and the amounts of the ascertained losses were eventually paid by the United States to Great Britain. The Treaty of Nov 19, 1794.

In the case of the "Jamaica," before the commission, under the 7th article of the treaty of 1794, the capturing vessel was alleged to have been armed in the United States, but the prize, (the Jamaica,) with her cargo, was burned by the captors, and never brought within the jurisdiction of the United States. Upon this bare case, without any allegation of permission or neglect by the Government of the United States as to the arming of the French cruiser, the advocate for the claimants contended that the law of nations obliged the United States to make compensation. The claim was rejected; "the board [one gentleman only dissenting] were of opinion that the case was not within the stipulation of the article under which the commissioners act." Construction of that Treaty by the commissioners appointed under it.

A rehearing being granted and counsel heard, Mr. Gore delivered the opinion sustaining the original determination. After reviewing British precedents cited by the counsel for the claimants, as supporting his view of international law, Mr. Gore says:

The counsel for the claimant seemed to suppose that the obligation to compensate arose from the circumstance of the privateer
[133] having been *originally armed in the United States; but as *there is not the smallest evidence to induce a belief that in this or in any other case the Government permitted, or in any degree connived at, such arming, or failed to use all the means in their power to prevent such equip-*

[1] Vol. IV, page 100. The United States also refer to Mr. Jefferson's letter to Mr. Hammond, of November 14, 1793.
[2] Vol. IV, page 97.
[3] Vol. IV, page 101.
[4] Treaty concluded between the United States and Great Britain, at London, November 19, 1794, commonly known as "Jay's Treaty." See United States Statutes at Large, Vol. VIII, page 116.

ment, there is no ground to support a charge on the fact that the armament originated in their ports."[1]

All these steps prior to 1794 were taken by the United States under the general rules of International Law, without the aid of a local statute, in order to perform what Mr. Jefferson called "their duty as a neutral nation to prohibit such acts as would injure one of the warring powers."[2] In 1794, however, the Congress of the United States, on the application of Great Britain, passed a statute prohibiting such acts, under heavy penalties.[3]

The neutrality laws of the United States enacted at the request of Great Britain.

The general provisions of the United States act of 1818 (which is still in force) are set forth in note 1, on page 114. This act was passed at the request of the Portugese Government. The act of 1838 was enacted on the suggestion of Great Britain. In the year 1837 a formidable rebellion against Great Britain broke out in Canada. Sympathizers with the insurgents begin ning to *gather on the northern frontier of the United States, Mr. [134] Fox the British Minister at Washington, "solemnly appealed to the Supreme Government promptly to interpose its sovereign authority for arresting the disorders," and inquired what means it proposed to employ for that purpose. The President immediately addressed a communication to Congress, calling attention to defects in the existing statute, and asking that the Executive might be clothed with adequate power to restrain all persons within the jurisdiction of the United States from the commission of acts of the character complained of. Congress, thereupon, passed the act of 1838. Thus Great Britain once more asked the United States to amend their neutrality laws, in British interest, so as to give more power to the Executive, and the request was complied with.

Case of the bark Maury.

In the year 1855, Great Britain being then at war with Russia, it was supposed by the British Consul, at New York, that a vessel called the Maury, which was being innocently fitted out at New York for the China trade, was intended as a Russian privateer. The British Minister at Washington at once called the attention of Mr. Marcy, the then Secretary of State, to this vessel. The affidavits which he inclosed for the consideration of the Secretary of State fell far, very far short of *the evidence which Mr. Adams submitted to [135] Earl Russell in regard to the Liverpool cruisers. The whole foundation which the British Minister furnished for the action of the United States was the "belief" of the Consul, his lawyer, and two police officers, that the vessel was intended for Russian service. This was communicated to the Government of the United States on the 11th of October. Notwithstanding the feebleness of the suspicion, the prosecuting officer of the United States was, on the 12th of October, instructed by telegraph to "prosecute if cause appears," and was at work on the 13th in order to prevent a violation of the sovereignty of the United States to the injury of Great Britain.[4] The proceedings given at length in the accompanying volumes show with what rapidity and zeal the investigation was made, and that the charge was at once proved to be unfounded.

Principles thus recognized by the two Governments.

In all this correspondence and these precedents, the following principles appear to have been assumed by the two Governments:

1. That the belligerent may call upon the neutral to enforce its municipal proclamations as well its municipal laws.

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[1] 2d Vol. Mins. Opinions, Department of State.
[2] Mr. Jefferson to M. Genet, June 5, 1793. Jefferson's Works, Vol. III, page 572.
[3] Mr. Canning's speech, cited *ante*, page 107.
[4] Vol. IV, pages 53-62.

2. That it is the duty of the neutral, when the fact of the intended violation of its sovereignty is *disclosed, either through the agency of the representative of the belligerent, or through the vigilance of the neutral, to use all the means in its power to prevent the violation. [136]

3. That when there is a failure to use all the means in the power of a neutral to prevent a breach of the neutrality of its soil or waters, there is an obligation on the part of the neutral to make compensation for the injury resulting therefrom.

Obligation to make compensation for injuries.

The United States are aware that some eminent English publicists, writing on the subject of the "Alabama Claims," have maintained that the obligation in such case to make compensation would not necessarily follow the proof of the commission of the wrong; but the United States confidently insist that such a result is entirely inconsistent with the course pursued by Great Britain and the United States, during the administration of General Washington, when Great Britain claimed of the United States compensation for losses sustained from the acts of cruisers that had received warlike additions in the ports of the United States, and the United States admitted the justice of the claim, and paid the compensation demanded. The United States also point to the similar compensation made by them to Spain in the treaty of 1819, for similar injuries inflicted on *Spanish commerce during the War of the Independence of the Spanish American Colonies, as showing the sense of Spain on this point. [137]

Correspondence between the United States and Portugal.

In the course of the long discussions between the two Governments on the Alabama claims, Great Britain has attempted to justify its course by a reference to the conduct of the United States toward Portugal between 1816 and 1822.[1]

These several replies of Mr. Adams amply defended the course of the United States in that affair. From the replies and from the official documents referred to in them, it would appear that in the year 1850 the United States had brought to the point of settlement a long-standing claim against Portugal, for the destruction of the American armed brig General Armstrong, in the harbor of Fayal, in the year 1814. They were at the same time pressing some other claims against Portugal, and were conducting a correspondence with the Portuguese Legation at Washington, growing out of the seizure of a Portuguese slaver.[2]

The Portuguese Government, as an offset to these claims of the United States, revived some exploded claims of Portugal against the United States, for alleged violation of neutrality, that had slumbered for nearly thirty years. These are the claims referred to by Earl Russell in his note to *Mr. Adams of May 4, 1865,[3] and his note to the same of August 30, 1865,[4] and his note to the same dated November 2, 1865.[5] Lord Russell asserts that the complaints of Portugal were more frequent and extended to a larger amount of property after 1818 than they had done before. Mr. Adams denies this allegation,[6] and his denial is supported by the evidence in possession of the Government of the United States. [138]

The facts appear to be these: On the 20th December, 1816, the Portuguese Minister informed the then Secretary of State (Mr. Monroe) of the fitting out of privateers at Baltimore to act against Portugal, in

[1] Vol. III, pages 556–560.
[2] Executive Document No. 53, 32d Congress, 1st session.
[3] Vol. III, page 525.
[4] Vol. III, page 548.
[5] Vol. III, page 584.
[6] Vol. III, page 621.

case it should turn out that that Government was at war with the "self-styled Government of Buenos Ayres." He further stated that he did not make the application in order "to raise altercations or to require satisfaction," but that he solicited "the proposition to Congress of such provisions by law as will prevent such attempts for the future," being "persuaded that my [his] magnanimous Sovereign will receive a more dignified satisfaction, and worthier of his high character, by the enactment of such laws by the United States." Mr. Monroe replied, on the 27th of the same month, "I have communicated your letter to the President, and have now the honor to transmit to you a copy *of a message which he has addressed to Congress on the subject, with a view to obtain such an extension, by law, of the Executive power as will be necessary to preserve the strict neutrality of the United States, * * * and effectually to guard against the danger in regard to the vessels of your Sovereign which you have anticipated." The act of 1817 was passed and officially communicated to the Portuguese Minister on the 13th of March, 1817. On the 13th of May, 1817, the Portuguese Minister informed the Secretary of State that although "the law passed at the last session of Congress obviated a great part of the evils" of which he complained, he feared there would be a lack of vigilance on the part of some of the officials, and he asked for special instructions to them. On the 8th of March, 1818, he complained to Mr. John Quincy Adams, then Secretary of State, of the capture of "three Portuguese ships, captured by privateers fitted in the United States, manned by American crews, and commanded by American captains, though under insurgent colors;" and he asked for satisfaction and indemnification for the injury. The note making this complaint contained neither proof of the allegations in the note as to the fitting out of vessels in the United States, or as to their being manned by Americans, nor indications from which the United States might have discovered *those facts for themselves. The [140] Secretary of State, therefore, in reply to such an allegation, very properly stated the fact that the United States had "used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they were at peace," *and* had "faithfully carried into execution the laws to preserve inviolate the neutral and pacific obligations of the Union;" and *therefore* could not consider themselves "bound to indemnify individual foreigners for losses by captures." It will not escape the notice of the Tribunal that Mr. Adams calls attention to the distinction between the national obligations under the law of nations and the duty of the Government to execute the municipal law; and that he grounds his refusal upon the fact that both have been complied with.

The Portuguese Minister next complains (October 15, 1818) that a privateer is fitting out in Baltimore, and the Secretary of State orders a prosecution and asks for the names of the witnesses, and it appears that before November 13th the Portuguese Minister is informed that the grand jury have found a bill against the accused. On the 14th of November the Portuguese Minister sends to the Secretary of State depositions and the names of witnesses, and informs him that he is alarmed at the "thick crowd of individuals who *are en- [141] gaged in this iniquitous business," and that "great care has been taken to intercept the notice of such facts from the knowledge of the Executive." Mr. Adams, on the 18th of November, informs the Minister that the evidence has been placed in the hands of the prosecuting attorney of the United States. It thus appears that the second com-

plaint was disposed of to the satisfaction of the representative of Portugal.

The third complaint, made on the 11th of December, 1818, states that an armed vessel called the Irresistible, sailing under so called Artigan colors, was committing depredations on the coast of Brazil, and that the commander and crew of the vessel were all Americans. It will be observed that in this complaint there is no charge made of an illegal use of the soil or waters of the United States in violation of their duties as a neutral. The charge is that citizens of the United States, beyond their jurisdiction, have taken service under a belligerent against Portugal.

The next communication from the Portuguese Minister is made on the 4th of February, 1819. He asks to have the neutrality act of 1817 continued. The Secretary of State answers, on the 9th, that that has already been done by the passage of the act of 1818. This appears to have been regarded as entirely satisfactory.

[142] *The next note is dated the 17th of March, 1819. Although stating that there were persons in the United States "interested in this iniquitous pursuit of plundering the lawful property of an inoffensive friendly nation," in which statement the Minister undoubtedly supposed that he was correct, he says that he has "abstained from written applications about the new individual offenses," and he makes no particular complaint, furnishes no evidence, and indicates no suspicions. It appears to be the object of the note to induce the Government of the United States to withdraw its recognition of the Artigan flag. "If this," he says, "is once declared illegal, and the prizes made under it acts of piracy, all occasions of bitterness and mistrust are done away." "I can, in the capacity of Minister of my Sovereign, certify you solemnly, and officially too, if necessary, that Artigas and his followers have been *expelled far from the countries that could afford them the least means and power of navigating, and consequently have no right to fight by sea.* What becomes, then, of the rights of privateers under this flag?" When the Tribunal come to consider the case of the Shenandoah at Melbourne they will find this language, which was referred to with approbation,

[143] and assumed by Earl Russell,[1] to be exactly in point in *disposing of the claims growing out of the acts of that vessel.

On the 22d of April the Secretary of State acknowledges the note of December 11, 1818, and says that he is informed the commander of the Irresistible has returned to Baltimore, and will be prosecuted for a violation of neutrality, and asks the Minister to furnish proof for the trial.

On the 23d of November, 1819, the Minister again complained. He says: "One city alone on this coast has armed twenty-six ships, which prey on our vitals, and a week ago three armed ships of this nature were in that port waiting for a favorable occasion of sailing for a cruise." But he furnishes no facts, and he gives neither proof nor fact indicating the city or the district which he suspected, and nothing to afford the Government any light for inquiry or investigation. On the contrary, he says: "*I shall not tire you with the numerous instances of these facts;*" and he adds, as if attaching little or no real importance to the matter: "Relying confidently on the successful efforts of this Government, *I choose this moment to pay a visit to Brazil.*"

On the 4th of June, 1820, the Minister, not yet having departed, informs the Secretary of State that he desires to offer his "thanks

[144] for the law that prohibits the entrance of privateers in the *most

[1] Vol. III, page 566.

important ports of the Union;" that he "acknowledges the salutary influence of the Executive in obtaining these ameliorations;" and that he is "fully persuaded of the sincere wishes of this Government to put a stop to practices so contrary to friendly intercourse."

On the 8th of June, 1820, he gives information of a formidable privateer, which he says is to be fitted out at Baltimore, and adds that he "has not the least doubt that the supreme Executive has both the power and the will of putting a stop to this hostile armament;" to which the Secretary of State, on the 20th of July, replies that "such measures have been and will continue to be taken, under direction of the President, as are within the competency of the Executive, and may serve to maintain inviolate the laws of the United States applicable to the case."

On the 16th of July the Minister "laid before this Government the names and value of nineteen Portuguese ships and their cargoes, taken by private armed ships fitted in the ports of the Union by citizens of these States;" but he did not accompany this allegation with proof of such fitting, or with anything tending in the remotest degree to fix a liability on the United States, or to afford them the means of an independent examination. He also proposed a joint commission for the settlement of these matters, which the Secretary of State, on [145] the 30th of September, 1820, declined, saying that "the Government of the United States has neither countenanced nor permitted any violation of neutrality by their citizens. They have, by various and successive acts of legislation, manifested their constant earnestness to fulfill their duties toward all parties to the war. They have repressed every intended violation of them which has been brought before their courts and substantiated by testimony." Other claims were transmitted to the United States Government on the 4th of December, 1820, unaccompanied, as had been the invariable case before, by anything tending to show a liability in the United States to make compensation.

The case appears to have been closed by an offer from Portugal, on the 1st of April, 1822, to grant to the United States exceptional commercial advantages if the United States would recognize these claims, and the refusal of the United States, on the 30th of April, to do so.

It is worthy of remark that in Earl Russell's elaborate statement of this correspondence, in his note of the 30th of August, 1865, he omits, with a completeness which argues design, certain parts of it which showed that the United States were animated with a constant desire to perform their international duties. Thus, nothing is [146] said of the Portuguese note of February 4, 1819, asking that the neutrality act of 1817 may be continued in force, and the American reply stating that it had been so continued. Nothing is said of the American note of the 22d of April, 1818, stating that the commander of the Irresistible, the vessel referred to in the Portuguese note of December 11, 1818, had returned to Baltimore and would be prosecuted. The American note of the 20th of July, 1820, is also omitted, in which, in answer to the Portuguese note of the 8th of June, 1820, it is stated that measures have been, and will continue to be, taken to maintain inviolate the laws of the United States.

The tribunal of arbitration cannot fail to observe that these suppressed notes had an important bearing in forming a judgment upon the correctness of the conduct of the Government of the United States in this case—a case which has received the official approval of Earl Russell, as Her Majesty's Principal Secretary of State for Foreign Affairs. From a candid review of the whole correspondence, it appears that the United States admitted or asserted the following propositions,

to which Her Majesty's government, through Earl Russell, has given its assent:

[147] 1. That a neutral government is bound to use *all the means in its power to prevent the equipping, fitting out, or arming, within its jurisdiction, of vessels intended to cruise against a power with which it is at peace. Principles recognized in that correspondence.

2. If the means within its power are, in the opinion of either belligerent, inadequate for the purpose, it is bound to receive suggestions of changes from the belligerent, and if it be true that the means are inadequate, it should so amend its laws, either in accordance with such suggestions or otherwise, as to put new and more effective means in the hands of its Executive.

3. That it is bound to institute proceedings under its laws against all vessels as to which reasonable grounds for suspicion are made to appear, even if the grounds for suspicion fall short of legal proof.

The Government of Portugal, during the whole correspondence, offered no evidence to prove that captures had been made by armed vessels illegally fitted out, equipped, or armed in the United States, nor even statements of facts tending to lead to the discovery of such evidence, which were not at once used for the purpose of detaining such vessels, or of punishing the guilty parties; nor did they contest by proof the allegation of Mr. John Quincy Adams that the Government of the United States had done everything in its power to per-

[148] form its duties as a neutral, and to execute its laws. The *correspondence shows exclusively that in every case in which the United States was furnished either with positive legal proof, or with such an intimation of the facts as would enable them to pursue the investigation themselves, they acted with the vigor which was required of them by International Law, and which Great Britain failed to show in similar cases during the rebellion.

The claims lay buried until they were exhumed by Mr. Figaniere, in 1850, as an offset to the "General Armstrong" case; and would have been forgotten if Earl Russell had not rescued them from oblivion.

The latest official act of Her Majesty's Government, indicating the views of Great Britain as to the duties of a neutral in time of war, is to be found in the rules contained in Article VI of the Treaty of Washington. It is true that it was thought essential by the British negotiators to insert in that instrument a declaration on the part of Her Majesty's Government that they could not consent to those rules as a statement of principles of International Law which were in force at the time when the claims now under discussion arose. But the United States were then, and are still, of the opinion, and they confidently think that the Tribunal of Arbitration will agree with

[149] them, not only that those rules were then in force, but that there were also other rules of International Law then in force, not inconsistent with them, defining, with still greater strictness, the duties of a neutral in time of war. Rules in the Treaty of Washington.

Article VI of the Treaty of Washington contains the following rules:

"A neutral government is bound—

"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

Article VII contains the following provision as to compensation: "In case the Tribunal finds* that Great Britain has failed to fulfill any duty or duties as aforesaid, it may, if it think proper, proceed to [150] award a sum in gross, to be paid by Great Britain to the United States, for all the claims referred to it;" and Article X provides that, "in case the Tribunal find that Great Britain has failed to fulfill any duty or duties as aforesaid, and does not award a sum in gross, the high contracting parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure."

The obligation to prevent vessels of war from being fitted out, armed, or equipped, within the jurisdiction of a neutral, when such vessels are intended to cruise or to carry on war against a Power with which the neutral is at peace, is recognized almost in the identical terms in which it was stated in the original United States act of 1794, which Mr. Canning said was passed at the request of the British Government, and in the British act of 1819, passed to aid Great Britain in the performance of its duties as a neutral.

What is "due diligence."

The rules impose upon the neutral the obligation to use *due diligence* to prevent such fitting out, arming, or equipping. These words are not regarded by the United States as changing in any *respect the obligations of a neutral regarding the [151] matters referred to in the rules, as those obligations were imposed by the principles of International Law existing before the conclusion of the Treaty.

The phrases "negligence" and "diligence," though opposite, are correlative expressions: the presence of the one implies the absence of the other. It happens that in the ordinary course of judicial proceedings the term "negligence" is of the one most frequently employed, and is therefore the one most often commented on and explained by writers on law. "Negligence," which is only the absence of the diligence which the nature and merits of any particular subject and the exigencies of any particular case demand as "due" from the nature of its inherent circumstances, implies blamable fault, called in the Roman law *culpa*, with reponsibility for consequences. The idea of obligation, either legal or moral, and of responsibility for its non-performance, is found in all the forms and applications of the question, either of diligence or of negligence.

Legal writers in England, in America, and on the Continent of Europe, have treated this matter in reference to numerous subjects of controversy, public and private. It has come under the consideration of courts in questions relating to the *custody of property, [152] to the performance of contracts, to the transportation of persons or property, to the collision of ships and railway-trains, to the discharge of private trusts, to the execution of public duties, and in many other ways.

In most of these cases, with the Roman, Continental, and Scottish jurists, and to a certain extent with English and American courts, the

question has generally been put as one of negligence or *culpa*, rather than as an absence of diligence. But, nevertheless, the phrase "due diligence," *exacta diligentia*, is of received use in the civil law.[1]

The extent of the diligence required to escape responsibility is, by all authorities, gauged by the character and magnitude of the matter which it may affect, by the relative condition of the parties, by the ability of the party incurring the liability to exercise the diligence required by the exigencies of the case, and by the extent of the injury which may follow negligence.

One of the earliest and one of the best of the English expositors of the Roman law is Ayliffe, (New Pandects of Roman Civil Law as anciently established in that Empire and practiced in most European Nations, London, 1734.) He says: "A fault is blamable through
[153] want of taking proper *care; and it obliges the person who does the injury, because by an application of due diligence it might have been foreseen and prevented."[2]

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[1] Vinnius, Comment. ad Inst., lib. 3, tit. 15.

[2] Ayliffe, in his Pandects, (B. 2, tit. 13, pp. 108, 109, 110,) has given an elaborate view of the different sorts of fault or negligence, and fraud and deceit. The passage is long, but as it contains a very ample view of the opinions of the Civilians it may be useful to place a part of it in a note:

"The word fault, in Latin called *culpa*, is a general term; and according to the definition of it, it denotes an offense or injury done unto another by imprudence, which might otherwise be avoided by human care. For a fault, says Donatus, has a respect unto him who hurts another not knowingly nor willingly. Here we use the word offense or injury by way of a genus, which comprehends deceit, malice, and all other misdemeanors, as well as a fault; for deceit and malice are plainly intended for the injury of another, but a fault is not so designed. And therefore we have added the word imprudence in this definition, to point out and distinguish a fault from deceit, malice, and an evil purpose of mind, which accompanies all trespasses and misdemeanors. A fault arises from simplicity, a dullness of mind, and a barrenness of thought, which is always attended with imprudence; but deceit, called *dolus*, has its rise from a malicious purpose of mind, which acts in contempt of all honesty and prudence, with a full intent of doing mischief, or an injury. And by these last words in the definition, namely, which might otherwise be avoided by human care, we distinguish a fault from a fortuitous case. For a fault is blamable through want of taking proper care; and it throws an obligation upon the person that does the injury, because by an application of due diligence it might have been foreseen and prevented. But fortuitous cases often cannot be foreséen, or (at least) prevented by the providence of man; as death, fires, great floods, shipwrecks, tumults, piracies, &c. Those things are superior to the prudence of any man, and rather happen by fate, therefore are not blamable. But if fraud or some previous fault be the occasion of these documents, they are not then deemed to be fortuitous cases. A fault is a deviation from that which is good; and, according to Bartolus, erring from the ordinance and disposition of a law. It is sometimes difficult to judge what is the difference betwixt a fault and a *dolus*, since these words very often stand for one and the same thing. There is no one in this life lives without a fault; but he that would speak distinctly and properly, must impute a *dolus* to some wickedness or knavery, and a fault to imprudence. The first consists chiefly in acting, and the other in not acting or doing something which a man ought to do. According to Bartolus, a fault is divided into five species, viz, *culpa latissima*, *latior*, *lata*, *levis*, and *levissima*. The first he makes to be equal to manifest deceit, and the second to be equivalent unto presumptive malice or deceit. The first and second of these distinctions (he says) approach unto fraud, and are sometimes called by the name of fraud. But a *lata culpa*, which is occasioned by gross sloth, rashness, improvidence, and want of advice, is never compared unto deceit or malice. For he that understands not that which all other men know and understand may be styled (says Bortolus) a supine and unthinking man, but not a malicious and deceitful person. But, I think, none of those distinctions of his have any foundation in law; for such things as admit of any degree of comparison, in respect of being more or less so, do not admit of any specific difference; as *majus et minus diversas species non constituunt*. For that which the law says *de latiore culpâ* sometimes is to be understood *de lata culpâ*, after the manner that a word of the comparative degree is sometimes put for a word of the positive, as in Virgil: *Tristior et lacrymis oculos suffusa nitentes*. Wherefore I shall here distinguish a fault into two species only, to wit, into *lata* and *levis*, though others mention a *culpa*

*Mr. Justice Story has elaborately discussed the meaning of [154] these terms, and the extent of diligence required to avoid responsibility. He says, as the result of a comparative examination of the authorities of different nations, "What is usually done by pru- *dent men in a particular country in respect to things of a like [155] nature, whether it be more or less, in point of diligence, than what is exacted in another country, becomes in fact the general measure of diligence."[1]

Following the example of Sir William Jones, *and other writers [156] on the civil law, Mr. Justice Story favors the idea that there may be three degrees of diligence, and three degrees of negligence, which are capable of being accurately defined and applied to the various circumstances of life. But while asserting, as the authorities supported him in doing, that not only the Roman law, but the jurists of Continental Europe and of Scotland all recognize this division, he candidly concedes the difficulty of applying such a fictitious system, and he is obliged to admit the general and only sound principle, that "diligence is usually proportioned to the degree of danger of loss, and that dan-

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lerissima too. The first denotes a negligence extremely blamable; that is to say, such a negligence as is not tempered with any kind of diligence. The other imports such a kind of negligence, whereby a person does not employ that care in men's affairs which other men are wont to do, though he be not more diligent in his own business. But as often as the word *culpa* is simply used in the law, it is taken for that which we style *culpa levis*, a light fault, because words are ever understood in the more favorable sense. A *culpa lerissima*, or simple negligence, is that which proceeds from an unaffected ignorance and unskillfulness, (say they,) and it is like unto such a fault, which we easily excuse, either on the account of age, sex, rusticity, &c. Or, to set the matter in a clearer light, a *lata culpa* is a diligence in a man's own affairs, and a negligence in the concerns of other men. And a *levis culpa* is, when a man employs the same care or diligence in other men's affairs as he does in his own, but yet does not use all care and fidelity which more diligent and circumspect men are wont to make use of; and this may be called an accustomed negligence as well in a man's own affairs as in the business of other men. A *lata culpa*, I mean a great fault, is equivalent or next unto deceit or malice. And it may be said to be next unto deceit or malice two ways, namely, either because it contains in it a presumptive deceit, as when a man does not use the same diligence in another's concerns as in his own; or else because the fraud is so gross and inexcusable, that, though fraud be not presumed, yet it differs but little from it. As when a person becomes negligent in favor of a friend; for though favor, or too great a facility of temper, excuses a man from malicious or knavish purposes, yet it is next of kin thereunto. And it is a rule laid down in law, that when the law commands any act of deceit to be made good, it is also always understood of a *lata culpa*, or a gross fault. Wherefore, since a great fault is equivalent or next unto deceit, it follows, that in every disposition of law where it is said that an evil intent or *dolus* ought only to be repaired, it is to be understood also of a *lata culpa*; which is true, I think, unless it be in the Cornelian law de Sicariis. For he who commits the crime of murder *ex latâ culpâ*, shall be punished according to the severity of that law, but in a more gentle manner; and thus herein a *lata culpa* is distinguished from malice, or an evil design, called *dolus malus*; for a murderer is liable on the score of his wicked purpose, and not on the account of gross negligence. Some say, that generally speaking, whenever the law or an action is touching a pecuniary penalty, and the law expressly mentions a *dolus*, a *lata culpa* is insufficient, and is excluded."

Numerous authorities to the same effect might be cited; but it will suffice at this stage to refer to such as are most familiar to jurists in Great Britain and the United States.

Wood's Institutes, p. 106.
Hallifax's Civil Law, p. 78.
Bell's Commentaries, § 232 *et seq.*
Browne's Civil and Admiralty Law, vol. 1, p. 354.
Erskine's Institutes, bk. 3, tit. 1.
Bowyer's Civil Law, p. 174.
Mackenzie's Roman Law, p. 186.
Domat's Civil Law by Strahan, vol. 1, p. 317.
Heineccius, Elementa Juris Civilis, lib. 3, tit. 14, Opera, tom. V.

[1] Story on Bailments, § 14.

ger is, in different states of society, compounded of very different elements."[1]

The highest court of the United States has doubted the philosophy of grading the degrees of diligence and negligence into fixed classes.[2]

The Scottish courts have laid down a rule which is perhaps more philosophical—that where an injury has been suffered through the act or omission of another, it must be shown, in order to avoid liability, that the accident was caused without any fault of the party doing or suffering the act or omission, and through some latent cause, which could not be discerned, obviated, controlled, or averted.[3]

[157] *In the discussion upon the Treaty of Washington in the House of Lords, Lord Granville, the Minister for Foreign Affairs, is represented as saying: "The obligation to use due diligence implies that the Government will do all in its power to prevent certain things, and to detain vessels which it has reasonable ground for believing are designed for warlike purposes."[4] Lord Cairns, in the same debate, is represented as saying: "The point turns upon the words 'due diligence.' Now, the moment you introduce those words you give rise to another question, for which I do not find any solution in this rule. What is the standard by which you can measure due diligence? Due diligence by itself means nothing. What is due diligence with one man, with one Power, is not due diligence with another man, with a greater Power." Sir Roundell Palmer, in a subsequent debate in the House of Commons, said that he supposed that due diligence "meant that a neutral should use, within a reasonable sense, all the means legitimately in its power."[5]

It is needless to say that the United States do not agree in these official definitions by Lord Granville and Sir Roundell Palmer, in the [158] sense in which *they are probably made. The definition to which Lord Cairns has given the weight of his authority appears to be nearer to the opinions as to these words, entertained by the United States.

The United States understand that the diligence which is called for by the Rules of the Treaty of Washington is a *due* diligence; that is, a diligence proportioned to the magnitude of the subject and to the dignity and strength of the Power which is to exercise it:—a diligence which shall, by the use of active vigilance, and of all the other means in the power of the neutral, through all stages of the transaction, prevent its soil from being violated:—a diligence that shall in like manner deter designing men from committing acts of war upon the soil of the neutral against its will, and thus possibly dragging it into a war which it would avoid:—a diligence which prompts the neutral to the most energetic measures to discover any purpose of doing the acts forbidden by its good faith as a neutral, and imposes upon it the obligation, when it receives the knowledge of an intention to commit such acts, to use all the means in its power to prevent it.

No diligence short of this would be "due;" that is, *commensurate with the emergency, or with the magnitude of the results of negligence.* Understanding the words in this sense, the United States finds them identical with the measure of duty which Great Britain had previously admitted.

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[1] Story on Bailments, § 14.

[2] Steamboat New World *vs.* King, 17 Howard Reports, page 475. See also the authorities there cited.

[3] Hay on Liabilities, ch. 8.

[4] London Times, June 13, 1871.

[5] A speech delivered in the House of Commons, on Friday, August 4, 1871, by Sir Roundell Palmer, M. P. for Richmond. London and New York, Macmillan & Co., 1871, page 28.

*It will also be observed that fitting out, or arming, or equip- [159
ping, each constitutes in itself a complete offense.

Fitting out, arming, or equipping each an offense.

Therefore a vessel which is fitted out within the neutral's jurisdiction, with intent to cruise against one of the belligerents, although not equipped or armed therein, (and *vice versa*) commits the offense against International Law, provided the neutral government had reasonable ground to believe that she was intended to cruise or carry on war against such belligerent, and did not use due diligence to prevent it.

The second clause of the first Rule.

The neutral is required by the second clause of the first Rule of the Treaty to prevent the departure from its jurisdiction of any vessel intended so to cruise or carry on war, such vessel having been *specially adapted, in whole or in part, within such jurisdiction, to warlike use.*

Reasons for change of language.

The Tribunal of Arbitration probably will not have failed to observe that a new term is employed here. In the first clause of the first Rule the obligation of the neutral is limited to the prevention of the "fitting out, arming, and equipping" the vessel. In the second clause, the language is much broader: a vessel which has been "specially adapted, in whole or in part, to warlike use," may not be permitted to depart. The reasons for this change may probably be found in the different interpretations which have been put by the Exe- *cutive and Judicial Departments of the two Governments upon [160] the words "fitting out" and "equipping," and in the desire of the negotiators of the Treaty to avoid the use of any words that could be deemed equivocal. The United States will endeavor to explain to the Tribunal what these differences of interpretation were.

The eighth section of the United States law of 1818 empowers the President to take possession of and detain vessels which have been "*fitted out and armed*" contrary to the provisions of the act. In the year 1869, while there was a state of recognized war between Spain and Peru, (although there had been no active hostilities for several years,) the Spanish Government made contracts for the construction of thirty steam gun-boats in the port of New York. After some of these boats were launched, but while most of them were on the stocks, and before any had received machinery or had been armed, the Peruvian Minister, on behalf of his Government, represented to the Government of the United States that this was being done in violation of the neutrality of the United States. The President, proceeding under the section of the statute above referred to, took possession of the vessels, and they remained in the custody of the naval forces of the United States until they were released, with *the consent of the Peruvian Minister at [161] Washington. This was done under the assumption that the construction of a vessel in neutral territory during time of war, which there is reasonable ground to belive may be used to carry on war against a power with which the neutral is at peace, is an act which ought to be prevented; and that the constructing or building such a vessel was included in the offense of fitting it out. The same interpretation (in substance) has been given to this language by the judicial authorities of the United States.[1] The British tribunals have given a different opinion upon the meaning of these words. In the case of the Alexandra,[2] against which proceedings were had in London, in 1863, for an alleged violation of the provisions of the act of 1819, it was held that the proof

[1] United States *vs.* Quincy, 6 Peters's Reports, 445.
[2] Vol. V, pages 3–470.

of the construction of a vessel for the purpose of hostile use against the United States did not establish such an equipment, or fitting out, or furnishing, as would bring the vessel within the terms of the Foreign Enlistment Act[1] and enable the Government to hold it by proceedings under that statute. When the Joint High Commissioners met
[162] at Washington, *and had to consider what words they would use in the Treaty, they found the Executive of the United States and the Judiciary of Great Britain differing as to the meaning of these important words.[2] The Tribunal of Arbitration may therefore reasonably presume that the framers of that Treaty, after the experience of the American insurrection, sought for language which would, beyond any question, indicate the duty of the neutral to prevent the departure from its ports of any vessel that had been specially adapted for the hostile use of a belligerent, *whether that adaptation began when the keel was laid to a vessel intended for such hostile use, or whether it was made in later stages of construction, or in fitting out, or in furnishing, or in equipping, or in arming, or in any other way.*

The undoubted duty of the neutral to *detain* such a vessel, although it had not been formulated by Great Britain in any of the acts prior to 1861 which have been passed in review, is understood to have been included in the obligation to prevent her construction. The United States regard this duty as one that existed by the law of nations prior
[163] to the Treaty of Washington; but as that *Treaty provides that, for the purpose of the present discussion, the rule is to be taken as having the force of public law during the Southern Rebellion, it is needless to discuss that point.

The United States invite the particular attention of the Tribunal to the continuing character of the second clause of this rule. The violation of the first clause takes place once for all when the offending vessel is fitted out, armed, or equipped within the jurisdiction of the neutral; but the offense under the second clause may be committed as often as a vessel, which has at any time been specially adapted, in whole or in part, to warlike use, within the jurisdiction of the neutral, enters and departs unmolested from one of its ports. Every time that the Alabama, or the Georgia, or the Florida, or the Shenandoah came within British jurisdiction, and was suffered to depart, there was a renewed offense against the sovereignty of Great Britain, and a renewed liability to the United States.

Continuing force of this rule.

The British Government, certainly once, if not oftener, during the rebellion, admitted its duty to detain these cruisers. Mr. Cobden stated it forcibly in a speech in the House of Commons:[3] "The Government admit, through their legal ad-
[164] viser, that they have the power, if they choose to exercise it, to prevent these vessels from entering our *harbors; but the honorable and learned gentleman doubts the expediency of exercising it, and his reason is that he thinks we have not clear proof of guilt. This brings me to a striking piece of inconsistency on the part of the

Duty to detain offending vessels admitted by Great Britain.

[1] This opinion was on the Act of 1819. The Act of 1870 provides that "equipping shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service."

[2] "It is perfectly true that Lord Chief Baron Pollock and Baron Bramwell, as well as other great legal authorities, thought that such words as these did not convey the true meaning of our then Foreign Enlistment Act; which, in their opinion, was intended to apply only to those vessels which might be armed within our jurisdiction, either completely or at least so far as to leave our waters in a condition immediately to commence hostilities."—Sir R. Palmer's Speech, August 4, 1871, page 32.

[3] Vol. V, page 590.

honorable and learned gentleman. He begins with administering a solemn exhortation, and something like a solemn reproof to English ship-builders, for infringing our neutrality laws and disregarding the Queen's Proclamation by building these ships. Well, but if they are violating our neutrality and disregarding the Queen's Proclamation, it must have been because they built these vessels for a belligerent to be employed against some Power with which we are at peace. The honorable and learned gentleman assumes that these individuals are guilty of these acts. He knows they have been guilty of these acts; he knows that these three vessels in particular, and the *Alabama* more especially, have been built for the Confederate Government, and employed solely for that Government, and yet he doubts the expediency of stopping them from entering our ports. He speaks as though we were asking that he should send out ships of war to order away these vessels without trial. He says there must be legal proof; but it does not require legal proof to warrant you in telling a Government, 'You have got these vessels clandestinely; you got them by the infringement of our neutrality *code, or, at least we suspect you upon fair grounds of doing [165] so; and unless you prove that they came legitimately into your hands, we must refuse them the hospitality of our ports.' Why, how do you act in private life? You hear charges and reports compromising the honor of your acquaintance or friend. You may have a moral conviction in your mind that that individual's honor is compromised, but you may not have legal proof of it, and still you may be quite justified in saying to him, 'Until you clear up these charges, which on the face of them criminate you, I must refuse you the hospitality of my house.' I hold that you have the right to say the same thing in regard to these cruisers. But what was the course of the Government in the case of the Alabama? *They told Mr. Adams, the American Minister, that they should give orders to stop the Alabama, either at Queenstown or Nassau. Therefore the principle was recognized in the case of that vessel that you had a right to stop her when she reached your jurisdiction.* I say, therefore, in the same way, prevent their entering your harbors until they give an account of themselves, to show how they became possessed of that vessel. This has a most important bearing, and one so apparent that it must be plain to the apprehensions of every honorable gentleman who hears it."

The French Government, during the insurrec*tion, practically [166] asserted the same power in the neutral to protect its violated sovereignty. The British Government in 1864 sold a screw gun-boat to persons who proved to be agents of the insurgents. This was done at a time when it was a matter of public notoriety that those agents were in England making great efforts to fit out a navy. The purchasers took the vessel to Calais to complete the equipment. On the way from the Thames to Calais the name of the vessel was changed to the "Rappahanock," the insurgent flag was hoisted, an insurgent officer, holding an insurgent commission, took the command, and the crew were mustered into the service of the insurgents. On arrival at Calais, attempts were made to complete the equipment. The French Government stopped this by placing a man-of-war across the bows, and holding the vessel as a prisoner, and the Rappahannock was thus prevented from destroying vessels and commerce, sailing under the flag of a nation with which France was at peace.

Also recognized by France.

The second Rule provides that a neutral government is bound not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other,

The second Rule of the Treaty.

or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

[167] *A question has been raised whether this rule is understood to apply to the sale of military supplies or arms in the ordinary course of commerce. The United States do not understand that it is intended to apply to such a traffic. They understand it to apply to the use of a neutral port by a belligerent for the *renewal* or *augmentation* of such military supplies or arms for the *naval operations* referred to in the rule. Taken in this sense, the United States maintain that the same obligations are to be found, (expressed in other words,) first, in the Foreign Enlistment Act of 1819; and, secondly, in the instructions to the naval forces of Great Britain during the rebellion.

The Tribunal of Arbitration will not fail to observe the breadth of this rule.

The ports or waters of the neutral are not to be made the base of naval operations by a belligerent. Vessels of war may come and go under such rules and regulations as the neutral may prescribe; food and the ordinary stores and supplies of a ship, not of a warlike character, may be furnished without question, in quantities necessary for immediate wants; the moderate hospitalities which do not infringe upon impartiality may be extended; but no act shall be done to make the neutral port a base of operations. Ammunition and military stores

[168] for cruisers cannot be obtained there; coal *cannot be stored there for successive supplies to the same vessel, nor can it be furnished or obtained in such supplies; prizes cannot be brought there for condemnation. The repairs that humanity demand can be given, but no repairs should add to the strength or efficiency of a vessel, beyond what is absolutely necessary to gain the nearest of its own ports.

In the same sense are to be taken the clauses relating to the renewal or augmentation of military supplies or arms and the recruitment of men. As the vessel enters the port, so is she to leave it, without addition to her effective power of doing injury to the other belligerent. If her magazine is supplied with powder, shot, or shells; if new guns are added to her armament; if pistols, or muskets, or cutlasses, or other implements of destruction, are put on board; if men are recruited; even if, in these days when steam is a power, an excessive supply of coal is put into her bunkers, the neutral will have failed in the performance of its duty.

The third Rule binds the neutral to exercise the same measure of diligence as required by the first Rule, in order to prevent, in its own ports and waters, and as to all persons within its jurisdiction, any violation of the obligations and duties prescribed by the first and second Rules. The same wakefulness and watch-

The third Rule of the Treaty.

[169] fulness, proportioned to the *exigencies of the case and the magnitude of the interests involved, that was required by the first Rule, is likewise required in the performance of the duties prescribed by the second Rule, without which the neutral will have failed in the performance of his duty.

The express recognition in the Treaty of an obligation (in case the Tribunal finds that Great Britain has failed to fulfill any of her duties in these respects) to pay to the United States the amount or amounts that may be found due, "*on account of the liability arising from such failure*," makes it unnecessary, in this connection, to do more than to refer to what has already been said on that subject.

Duty to make compensation for injuries.

The doctrines of International Law which have thus been deduced

Foregoing views in harmony with opinions of European publicists.

from the practice of Great Britain are in harmony with the views of the best publicists. The discussions between the two Governments growing out of the acts herein complained of, and unfortunately made necessary by the unwillingness of Great Britain to apply to the United States the same measure of justice which was applied to Spain in 1819, to Portugal in 1827, and which was received by Great Britain from the United States in 1793, have evoked the comments of many writers in England, in America, and on the continent of Europe. For obvious reasons the opinions of the English or American *writers favorable to their respective countries— [170] (as for instance Professor Bernard in Great Britain or President Woolsey in America)—will not be regarded.

On the 20th of May, 1865,[1] Mr. Adams had occasion to quote to Lord Russell the opinion of Hautefeuille: "What the obligation of Her Majesty's Government really was, in this instance," he said, "is so clearly laid down by a distinguished writer, notoriously disposed never to exaggerate the duties nor to undervalue the privileges of neutrals, that I will ask the liberty to lay before you his very words: 'Le fait de construire un bâtiment de guerre pour le compte d'un belligérant, où de l'armer dans les états neutres, est une violation du territoire. Toutes les prises faites par un bâtiment de cette nature sont illégitimes, en quelque lieu qu'elles été faites. Le souverain offensé a le droit de s'en emparer, même de force, si elles sont amenées dans ses ports, et d'en réclamer la restitution lorsqu'elles sont, comme cela arrive en général, conduites dans les ports hors de sa juridiction. Il peut également réclamer le désarmement du bâtiment illégalement armé sur son territoire, et même le détenir, s'il entre dans quelque lieu soumis à sa souveraineté, jusqu'à ce qu'il ait été désarmé.'"[2]

*The distinguished Dr. Bluntschli, professor at the University [171]

Bluntschli.

of Heidelberg, in his pamphlet, entitled "Opinion impartiale sur la question de l'Alabama et sur la manière de la résoudre," reprinted at Berlin, in 1870, from the *Revue de Droit International*, says as follows:

"La violation des devoirs d'un état ami, dont l'Angleterre se rendit coupable lors de l'équipement de l'Alabama, fut la circonstance la plus éclatante, mais non la seule dans laquelle se révélèrent les dispositions hostiles du gouvernement anglais. Il y eut encore d'autres croiseurs sudistes du même genre. Les nombreux coureurs de blocus qui transportaient en même temps de la contrebande de guerre, avaient tous également leur origine et leurs propriétaires en Angleterre. Partout où les troupes de l'union finirent par l'emporter et s'emparèrent des places ennemies, elles trouvèrent des armes anglaises et des canons anglais.

"Tous les faits ainsi allégués n'ont pas la même importance. Mais plusieurs d'entre eux, si tant est qu'il faille les tenir pour avoués ou prouvés,—ce dont nous n'avons pas à juger ici,—doivent certainement être considérés comme constituant une infraction aux devoirs d'un état neutre.

"L'état neutre qui veut garantir sa neutralité, doit s'abstenir d'aider aucune des parties belligé*rantes dans ses opérations de [172] guerre. Il ne peut prêter son territoire pour permettre à l'une des parties d'organiser en lieu sûr des enterprises militaires. Il est obligé de veiller fidèlement à ce que des particuliers n'arment point sur

[1] Vol. III, page 538.

[2] Hautefeuille. Des droits et des devoirs des nations neutres, (Paris, 1849,) tome 2me, pages 79–80.

son territoire des vaisseaux de guerre, destinés à être livrés à une des parties belligérantes. (BLUNTSCHLI, *Modernes Völkerrecht*, § 763.)

"Ce devoir est proclamé par la science, et il dérive tant de l'idée de neutralité que des égards auxquels tout état est nécessairement tenu envers les autres états, avec lesquels il vit en paix et amitié.

"La neutralité est la *non-participation* à la guerre. Lorsque l'état neutre soutient un des belligérants, il prend part à la guerre en faveur de celui qu'il soutient et dès lors *il cesse d'être neutre*. L'adversaire est autorisé à voir dans cette participation un acte d'hostilité. Et cela n'est pas seulement vrai quand l'état neutre livre lui-même des troupes ou des vaisseaux de guerre, mais aussi lorsqu'il prête à un des belligérants un appui *médiat* en permettant, *tandis qu'il pourrait l'empêcher*, que, de son territoire neutre, on envoie des troupes ou des navires de guerre.

"Partout où le droit de neutralité étend le cercle de son application, il restreint les limites de la guerre et de ses désastreuses consé-
[173] quences, et il *garantit les bienfaits de la paix. Les devoirs de l'état *neutre* envers les *belligérants* sont, en substance, *les mêmes* que ceux de l'état *ami, en temps de paix*, vis-à-vis des autres états. Aucun état ne peut non plus, en *temps de paix*, permettre que l'on organise sur son territoire des agressions contre un état ami. Tous sont obligés de veiller à ce que leur sol ne devienne pas le point de départ d'entreprises militaires dirigées contre des états avec lesquels ils sont en paix.

"Ces devoirs internationaux universels sont aussi consacrés, dans le droit public interne, par les législations anglaises et américaines. La loi anglaise du 3 juillet 1819 contient à ce sujet (art. 7) la disposition suivante:

"'*And be it further enacted*, That if any person within any part of the United Kingdom, or in any part of His Majesty's Dominions beyond the seas, shall, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or
[174] potentate, or of any *foreign colony, province, or part of province, or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the persons exercising, or assuming to exercise, the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country with whom His Majesty shall not then be at war . . .'

"Cette loi défend incontestablement tout appui prêté en cas de guerre, peu importe que les parties belligérantes soient des états étrangers reconnus, ou des usurpateurs du pouvoir, ou des colonies, ou des provinces révoltées. Donc, le gouvernement anglais, en permettant intentionnellement ou par une négligence évidente,—alors qu'il aurait pu et dû l'empêcher,—l'équipement de l'Alabama, a méconnu du même coup un devoir international à l'égard de l'union américaine et les prescriptions d'une loi nationale. Par ces motifs il est aussi, d'après les règles du droit des gens, responsable envers l'état lésé.

"Il est notoire que la loi anglaise est une imitation de la loi américaine de 1818 sur la neutralité, laquelle ne faisait elle-même que reviser et rétablir la loi antérieure de 1794. C'est même précisément la
[175] question de l'équipement de corsaires sur *un territoire neutre, au profit d'une partie belligérante, qui donna la première impul-

sion à cette législation. En 1793 l'Angleterre, qui était à cette époque en guerre avec la France, se plaignit de ce qu'à New-York on équipât des corsaires français pour nuire au commerce maritime anglais. Le Président Washington sévit avec une grande énergie contre cette violation de la neutralité et, malgré la sympathie de la population américaine pour les Français, malgré les démarches de l'ambassadeur français Genet, il fit saisir les corsaires. Il empêcha, de la même manière, la construction, en Géorgie, d'un corsaire destiné à entraver la navigation française. Des deux côtés, il observa consciencieusement et raisonnablement les devoirs d'un état neutre, et détermina ensuite le congrès à régler ces devoirs par voie législative.[1]

"Le ministre libéral Canning invoqua dans le parlement anglais, en 1823, cette honorable attitude de Washington pour défendre, de son côté, la loi anglaise sur la neutralité contre les attaques d'hommes politiques passionés on de particuliers égoïstes.[2]

"L'opinion du monde savant et du monde politique éclairé est presque unanime à reconnaître ces principes, que le peuple americain et son premier *Président ont l'honneur d'avoir proclamés avant [176] tous les autres, dans des textes de lois clairs et formels."

Rolin Jacquemyns.

Mr. Rolin Jacquemyns, in a notice of the able treaties of Mountague Bernard, published in the same review in 1871, says:

"Dans le cas spécial de l'Alabama, M. M. Bernard insiste sur le fait que ce vaisseau, en sortant du port de Liverpool, n'avait ni un canon, ni un mousquet. Il reçut dans la baie de Moëlfra environ quarante hommes d'équipage qui lui furent amenés de Liverpool, mais sans aucun matériel de guerre. C'est seulement à Terceira, une des îles Açores, par conséquent dans les eaux portugaises, qu'il fut rejoint par la barque Agrippine, de Londres, et un peu plus tard par le *steamer* Bahama, de Liverpool, qui lui amenèrent ses officiers, son armement, les habits de l'équipage et un supplément de charbons.[3] Un fait analogue s'est présenté pour les corsaires Shenandoah et Géorgia, qui, également construits en Angleterre, en étaient également partis sans armes ni équipement. 'Il est vrai,' dit M. M. Bernard, (p. 382,) 'que l'armement fourni à ces vaisseaux leur fut expédié de différents ports anglais, chaque fois évidemment *en vertu d'un concert préalable, mais c'est ce que le [177] gouvernement anglais ne savait ni ne pouvait savoir,' et plus loin il essaie d'établir la thèse qu'un gouvernement neutre n'est pas obligé, en droit international, d'empêcher la sortie de ses ports de bâtiments ayant l'apparence de vaisseaux de guerre mais désarmés, alors même que l'on a des raisons de les croire construits pour le service d'un des belligerants. (V. p. 385 et pp. 390 et ss.)

"Il nous semble que l'adoption d'une pareille proposition équivaudrait à l'indication d'un moyen facile d'éluder la règle qui déclare incompatible avec la neutralité d'un pays l'organisation, sur son territoire, d'expéditions militaires au service d'un des belligérants. Il suffira, s'il s'agit d'une entreprise maritime, de faire partir en deux ou trois fois les élements qui la constituent; d'abord le vaisseau, puis les hommes, puis les armes, et si tous ces éléments ne se rejoignent que hors des eaux de la puissance neutre qui les a laissés partir, la neutralité sera intacte. Nous pensons que cette interprétation de la loi internationale n'est ni raisonnable, ni équitable. Sans doute il ne faut pas demander l'impossible, et puisque le droit international actuel n'empêche pas les

[1] (*Note by M. Bluntschli.*)—"BEMIS, *American Neutrality*, Boston, 1866, p. 17 et seq.

[2] (*Note by M. Bluntschli.*)—"PHILLIMORE, *Intern. Law.* III, 217.

[3] (*Note by Mr. Rolin-Jacquemyns.*)—"Ce point n'était pas nettement indiqué dans la version donnée par M. Sumner, V. t. I, p. 452, de la *Revue*, ainsi que l'article de M. Bluntschli. V. aussi les publications citées plus haut de MM. ESPERSON et PIERANTONI.

neutres de permettre à leurs sujets l'exportation d'armes et de munitions de guerre à l'usage des belligérants, on ne peut exiger
[178] que l'on arrête les armes dans le cas dont il *s'agit. Mais cette tolérance n'est qu'une raison de plus pour se montrer scrupuleux à l'égard des vaisseaux et des hommes. La considération que la fraude, même confinée dans ces limites, sera encore praticable, que les hommes pourront être nominalement engagés pour une destination pacifique, que la différence entre les vaisseaux de guerre et ceux de commerce ne se reconnait pas toujours à des caractères certains, peut servir, dans les cas particuliers, à excuser ou à justifier la conduite du gouvernement neutre qui se laisse tromper aux apparences. Mais dans l'espèce ces motifs de justification ou d'excuse n'existent certainement pas. Bien que l'Alabama n'ait été armée ni dans la Mersey, ni dans la baie de Moëlfra, il est certain que, dès le 24 juin (plus d'un mois avant son départ), M. Adams avait informé officiellement Lord Russell qu'un nouveau et puissant *steamer* était prêt à quitter Liverpool, dans le dessein manifeste de servir à la guerre maritime, et que les parties intéressées dans l'entreprise étaient des personnes bien connues à Liverpool comme agents et officiers des insurgés sudistes.[1] Il est certain que, le 21 juillet, comme le collecteur et les autorités des douanes avaient prétendu ne pouvoir agir sur des renseignements vagues, le consul des États-Unis leur remit six affidavits, et que
[179] le 23 juillet il leur en remit *deux autres; que trois de ces documents étaient les dépositions de marins engagés à bord de l'Alabama, et attestant comme chose notoire 'que le vaisseau était un vaisseau de combat (*a fighting vessel*), construit et aménagé comme tel, avec de grandes quantités de poudre, de charbons, et de provisions; que les déposants avaient été enrôlés par des personnes bien connues comme agents des États Confédérés; qu'ils n'avaient pas encore d'articles formels d'engagement, mais qu'il était généralement su à bord que le vaisseau était un corsaire du gouvernement fédéral, destiné à combattre les États-Unis en vertu d'une commission de M. Jefferson Davis.[2] Un des marins ajoutait cette déclaration caractéristique, qu'il avait été déjà capturé comme coureur de blocus, et que son idée fixe était de retourner dans le sud 'pour se venger sur les gens du nord de ce qu'ils lui avaient pris ses habits.' On lui avait promis que cette occasion ne tarderait pas à se présenter.[3]

"A ces affidavits était jointe une consultation émanée d'un des
[180] premiers avocats d'Angleterre, *M. Collier, lequel, sur le vu des pièces, émettait l'opinion qu'une violation du '*Foreign Enlistment Act*' était établie, et que le collecteur des douanes avait le droit et le devoir d'arrêter le vaisseau.

"Six jours encore s'écoulèrent avant le rapport des jurisconsultes officiels (law officers). Ce fut le 29 juillet seulement qu'ils conclurent également à ce que le vaisseau fût arrêté. Mais le 28, le corsaire, averti qu'on allait l'empêcher de partir, se hâtait de quitter, *quatre jours plus tôt qu'il ne se l'était proposé* le bassin où il se trouvait, et le 29 il prenait la mer.[4] Cependant il ne quitta les eaux anglaises que le 31.

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[1] "M. BERNARD, p. 339.

[2] (*Note by Mr. Rolin-Jacquemyns.*)—"'It is well known by the hands on board that the vessel is a privateer for the confederate government to act against the United States under a commission from Mr. Jefferson Davis. Affid. No. 1, BERNARD, p. 363.

[3] (*Note by Mr. Rolin-Jacquemyns.*)—"Affid. No. 8, p. 369. 'I wanted to get South in order to have retaliation of the Northerners for robbing me of my clothes. He [l'agent des états du sud] said that if I went with him in his vessel I should very shortly have that opportunity.'

[4] (*Note by Mr. Rolin-Jacquemyns.*)—"Affidavit de Clarence Yonge, cité par M. BERNARD, p. 345, en note.

"M. Bernard ne croit pas que la sortie de l'Alabama, effectuée dans ces circonstances, suffie pour justifier l'imputation de *faute grave* de *coupable négligence* à la charge du gouvernement anglais. Il convient, toutefois, que ni un Anglais, ni un Américain n'a peut-être le droit d'avoir sur cette question une confiance implicite dans son propre jugement. Mais il ne voit pas ce qui l'empêcherait de dire que l'accusation lui paraît *légère* et *déraisonnable*. Quant à nous, nous ne voyons pas comment il serait possible à quelqu'un qui n'est ni Anglais, ni Américain, de partager cette patriotique indulgence."

Ortolan. *Mr. Théodore Ortolan, of the French navy, from his practical [181] experience, as well as from his theoretical knowledge and his high reputation as a publicist, is recognized as a writer of authority on these subjects. In a late edition of his *Diplomatie de la mer*[1] he discusses the subject of neutral obligations with special reference to the differences between Great Britain and the United States. He says:

"Si l'on suppose un navire construit sur le territoire neutre, non pas sur commande d'un belligérant, ou par suite d'un traité ostensible ou dissimulé avec ce belligérant, mais en vue d'un dessin quelconque, soit de navigation commerciale, soit tout autre, et que ce navire, déjà par lui-même propre à la guerre ou de nature à être converti à cet usage, une fois sorti des ports de la nation neutre, soit vendu, dans le cours de sa navigation, occasionnellement, à l'un des belligérants, et se mette à naviguer en destination directe pour ce belligérant, un tel navire dans de telles circonstances tombe uniquement sous le coup des règles relatives à la contrebande de guerre. Il est sujet à être arrêté et confisqué par l'ennemi qui pourra s'en emparer, mais sans qu'aucun grief de violation des devoirs de la neutralité puisse sortir de ce fait contre l'état neutre pour n'avoir pas défendu à ses *nationaux de telles [182] ventes ou ne les avoir pas réprimées. C'est une opération de trafic qui a eu lieu, trafic de contrebande de guerre, dont aucune circonstance particulière n'est venue changer le caractère.

"Tel fut, en l'année 1800, le cas du navire américain le Brutus, capturé par les Anglais et jugé de bonne prise par la cour d'amirauté d'Halifax.

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"Mais la situation change, la contrebande de guerre n'est plus la question principale, d'autres règles du droit des gens interviennent et modifient profondément la solution, si l'on suppose qu'il s'agisse de bâtiments de guerre construits, armés ou équipés sur un territoire neutre pour le compte d'un belligérant, par suite d'arrangement pris à l'avance avec lui, sous la forme d'un contract commercial quelconque: vente, commission, louage d'industrie ou de travail; que les arrangements aient été pris ostensiblement ou qu'ils le soient d'une manière secrète ou déguisée; car la loyauté est une condition essentielle dans la solution des difficultés internationales, et sous le couvert de fausses apparances, il faut toujours aller au fond des choses. Il y a ici, incontestablement, une seconde hypothèse qu'il importe de distinguer soigneusement de la précédente.

"Nous nous rattacherons, pour résoudre en *droit des gens les [183] difficultés que présente cette nouvelle situation, à un principe universellement établi, qui se formule en ce peu de mots: 'Inviolabilité du territoire neutre.' Cette inviolabilité est un droit pour l'état neutre, dont le territoire ne doit pas être atteint par les faits de guerre, mais

[1] Diplomatie de la mer, tome 2, page 208.

elle impose aussi à ce même etat neutre une étroite obligation, celle de ne pas permettre, celle d'empêcher, activement au besoin, l'emploi de ce territoire par l'une des parties, ou au profit de l'une des parties belligérantes, dans un but hostile à l'autre partie.

"Les publicistes en crédit ne font aucun doute pour ce qui concerne l'armement et l'équipement dans un port neutre de bâtiments de guerre destinés à accroître les forces des belligérants. Ils s'accordent pour reconnaître l'illégalité de ces armements ou équipements, comme une infraction de la part de l'état neutre qui les tolérerait aux devoirs de la neutralité.

"N'est-il pas évident qu'il en doit être de même *a fortiori* de la construction de pareils bâtiments, lorsque cette construction a lieu dans les conditions prévues en notre seconde hyothèse?"

The attention of Italian jurists and publicists has also been attracted to the discussion. A learned and exhaustive pamphlet appeared at Florence in 1870 from the pen of Professor Pier*antoni. Without claiming the extreme rights which this learned gentleman concedes to them, the United States invite the attention of the Tribunal of Arbitration to the following expression of opinion:

[184]

"Dopo che nella sez. XXII, il professor di Pavia sostiene che nè il governo inglese nè gli altri governi debbano assumere la giuridica responsabilità delle depredazioni commesse dai corsari separatisti, nella seguente sez. XXIII, passa ad esaminare il secondo suo assunto: se la neutralità fu violata dalla Gran Bretagna per la costruzione dell' Alabama, legno corsaro, e pel consentito armamento nei cantieri inglesi. Egli in brevi termini chiama l'Inghilterra responsabile dei soli danni cagionati dalle depredazioni del detto legno, scrivendo: 'Di queste perdite soltanto deve rispondere il governo britannico, per essere le medesime una conseguenza immediata di un fatto illegittimo, che ebbe luogo da sua parte, violando apertamente le leggi della neutralità.' Pierantoni.

"Io non posso acconsentire a questa mite conchiusione, anzi me ne discosto per considerazioni di fatto e di diritto. In linea di fatto, io non intendo come il chiarissimo autore escluda le altre specie di offese, che il Sumner ed il suo governo adducono di aver patite dalla nazione americana (*sic.*) Nella esposizione dell'argomento ho citato *i tre capi, nei quali riassume il Sumner la serie delle offese patite. Il caso del vascello costrutto a Liverpool è il più grave; ma gli Americani sostengono che avvennero altri simiglianti casi, e sino a prova contraria non è lecito circoscrivere il numero dei fatti addotti come offensivi.

[185]

"In diritto, io non so, chè in questa seconda parte lo scrittore non ricorre ad alcuna dimostrazione dottrinale, perchè egli limiti le conseguenze della violata neutralità al semplice rifacimento de' danni cagionati dal legno corsaro.

"I principii della neutralità soltanto accennati dimostrano più grave la responsabilità del governo che la violò."[1]

Lastly, the United States cite, for the consideration of the Tribunal, the authority of Lord Westbury, Lord High Chancellor of England during the rebellion, who, on the 7th day of March, 1868, in a discussion in the House of Lords on these questions, said: "There was one rule of conduct which undoubtedly civilized nations had agreed to observe, and it was that the territory of a neutral should not be the base of military operations by one of two belligerents against Lord Westbury.

[1] La Questione Anglo-Americana dell' Alabama, per l'Avv. A. Pierantoni, Firenze 1870, pages 40–7.

the other. In speaking of the base of operations, he must, to a certain degree, differ from the noble earl, [Earl Russell.] *It was not a question whether armed ships *had actually left our shores; but it was* [186] *a question whether ships with a view to war had been built in our ports by one of two belligerents. They need not have been armed; but if they had been laid down and built with a view to warlike operations by one of two belligerents, and this was knowingly permitted to be done by a neutral Power, it was unquestionably a breech of neutrality.*"[1]

The public and official acts of other European Governments have also been in harmony with the principles which are claimed in this paper to have been violated by Great Britain.

Case of Swedish vessels.

During the war between Spain and the Spanish-American Colonies, the Government of Sweden sold, in the ordinary course of commerce, to some private individuals, some vessels of war, after first dismantling them of their armament, and reducing them to a much less formidable condition than the Alabama was in when she left Liverpool. Some of the correspondence which took place between the Spanish Minister at Stockholm, the Russian Minister, and the Swedish Government may be found in *De Marten's Causes Célèbres*, Vol. 5, page 229, *et seq.* A good *résumé* of the whole case may be found in De Cussy,[2] to which the United States invite the attention of the Tribunal of Arbitration in full, as follows:

*** Dans l'année 1820, le roi de Suède prit la résolution de faire [187] vendre, quand l'occasion s'en présenterait, quelques bâtiments de guerre dont la construction remontait à plus de vingt-cinq ans, ordonnant d'ailleurs de les remplacer immédiatement par des bâtiments nouveaux en appliquant aux frais de construction de ceux-ci le produit de la vente des premiers: le but et les intentions du roi, en cette circonstance, étaient de rendre, au sein de la paix, quelque activité aux chantiers de la marine royale, par la construction de cinq ou six vaisseaux de guerre.

"La Suède fit proposer à l'Espagne d'acheter ces bâtiments, tant par l'intermediaire de M. de Moreno, envoyé de la cour de Madrid, à Stockholm, que par celui de M. de Lorichs, chargé d'affaires de Sa Majesté suédoise auprès du gouvernement de S. M. catholique. Le ministère fit également proposer, en même temps, à la cour d'Espagne de lui céder, à des prix modérés, de la poudre et des projectiles, et de mettre les chantiers de la marine royale de Suède à la disposition de S. M. catholique.

"La cour de Madrid déclina ces propositions diverses: l'Espagne possédait, répondit M. de Moreno, tous les éléments nécessaires pour la fabrication de la poudre, et un nombre suffisant de vaisseaux de guerre; l'argent seul manquait pour mettre en activité les moulins à poudre et pour ravitailler les bâtiments.

*** Le ministre de la marine de S. M. suédoise avisa donc aux [188] moyens nécessaires pour trouver des acquéreurs. Six vaisseaux, fort bons encore, bien que leur construction remontât à 25 et 30 ans, furent déclarés réformés, et leur vente fut annoncée; c'étaient le vaisseau *Försigtigheten* (la Prévoyance) et les frégates, *l'Eurydice, la Camille, la Manligheten, le Chapman, et la Tapperheten.*

"Avant de procéder à la vente, qui eut lieu au commencement de l'année 1825, le ministre suédois fit renouveler la proposition d'achat des dits bâtiments au chargé d'affaires d'Espagne qui se trouvait encore, à cette époque, à Stockholm, ainsi qu'à son successeur M. d'Alvarado.

[1] Hansard, 3d series, Vol. CXCI, pages 346, 347.
[2] De Cussy, Droit Maritime, tome 2, page 402.

"Sur le refus de la légation espagnole d'entrer en négociation pour l'acquisition des bâtiments désignés, le gouvernement suédois accepta les offres que lui fit la maison de commerce, établie à Stockholm, Michaelson et Benedicks; celle-ci peu après céda les bâtiments dont elle avait fait l'acquisition à la maison anglaise Barclay, Herring, Richardson et C^ie^, de Londres.

"Or, cette dernière maison ayant, ainsi que la maison Goldsmith, de Londres, fourni les fonds de l'emprunt contracté, peu de temps avant, par le Mexique, l'Espagne crut reconnaître, dans la circonstance de l'achat des bâtiments réformés fait par la maison Barclay, Herring, Rich-
[189] ardson et *C^ie^, des mains de la maison de Stockholm, une intention de *simulation* ayant pour but d'éloigner la pensée que le gouvernement suédois était informé (quand il accepta les offres de la maison Michaelson et Benedicks, de Stockholm) de la destination qui serait prochainement donnée aux vaisseaux de guerre vendus par le ministre de la marine.

"Pour M. d'Alvarado, chargé d'affaires d'Espagne, il ne semblait pas douteux que les bâtiments achetés, dans le principe, par la maison Michaelson et Benedicks, pour passer, peu de temps après, entre les mains de la maison Barclay, Herring, Richardson et Compagnie qui se trouvait en relations d'affaires d'argent avec *la colonie révoltée*, étaient destinés à renforcer les armements maritimes des insurgés de l'Amérique espagnole.

"C'est dans cette conviction, fondée, disait-il, sur la notoriété publique à Stockholm, à Carlscrona, à Gothenbourg, et à Londres, que M. d'Alvarado, dans la note qu'il addressa, le 1^er^ juillet 1825, à M. le comte de Wetterstedt, ministre des affaires étrangères de Suède, et par laquelle il faisait appel à la loyauté de S. M. suédoise, dont la religion avait sans doute été surprise, conjura le gouvernement du roi de résilier les contrats de vente, et avant tout de retenir dans ses ports quatre des bâtiments vendus qui s'y trouvaient encore.

[190] "Dans sa réponse au chargé d'affaires d'Espagne, le ministre suédois déclara que si le gouvernement de S. M. suédoise avait vendu, à des négociations, quelques vaisseaux de guerre, qu'on avait jugé apropos de réformer, en se réservant d'ailleurs la moitié de l'armement, il n'avait fait qu'exercer son droit que personne ne pouvait lui contester. 'Son action,' continuait le ministre, 's'arrête là; et si M. d'Alvarado peut, ou croit pouvoir, prouver que les acquéreurs ont l'intention de faire de ces bâtiments un usage qui pourrait devenir nuisible à l'Espagne, c'est auprès du gouvernement britannique que sa cour doit agir, lui seul pouvant exercer sur ses sujets la surveillance qui lui conviendra. Mais vouloir, sur de simples présomptions, arrêter une vente dans *la crainte d'un danger à venir, qui pourrait en résulter*, ce serait anéantir l'activité et le développement de toutes les transactions commerciales.'

"A la suite de diverses notes échangées entre le ministre suédois et M. d'Alvarado, qui obtint des envoyés des puissances amies et alliées de l'Espagne, résidant à Stockholm, d'appuyer ses réclamations, le gouvernement de S. M. le roi de Suède, voulant donner un témoignage de la bonne foi qui l'avait guidé dans toute cette affaire, consentit à résilier les contracts de vente qui avaient été passés, en dernier lieu, à l'occasion de *la Prévoyance*, de *l'Eurydice*, et de *la Camille*.

[191] *"Cette résiliation entraîna, pour le gouvernement suédois, une perte d'argent assez considérable, que l'on a évaluée à plus de 60,000 francs.

"Les membres de l'opposition, dans la diète tenue en 1828, cherchèrent à établir que le gouvernement du roi *avait violé la constitution*, (éternel et

banal argument de toutes les *oppositions* dans tous les pays!) non-seulement pour avoir vendu des bâtiments de la marine de l'état sans avoir obtenu préalablement l'assentiment des états, mais aussi pour avoir depuis permis la résiliation des marchés, et s'être soumis, de cette sorte, à une perte en argent d'un chiffre élevé. Une commission fut nommée pour examiner la conduite du gouvernement, laquelle, après leur examen, fut trouvée irrépréhensible.

"Les états sollicitèrent, il est vrai, du roi, que S. M. voulût bien prendre les mesures nécessaires pour faire rentrer au trésor les sommes que le gouvernement avait cru devoir sacrifier, quand il se vit mieux éclairé sur les inconvénients résultant de la vente effectuée et lorsqu'il céda aux représentations diplomatiques dont cette vente était devenue l'objet; mais la mort du Comte de Cederström, chef de l'administration de la marine, *contre lequel la demande paraissait dirigée*, mit fin à cette affaire; elle ne fut pas reprise, en *effet, dans le cours des séances [192] de la diète suivante.

"Le gouvernement suédois en résiliant les contrats de vente, et en s'imposant un sacrifice d'argent en cette circonstance, agit dignement et loyalement; aussi longtemps qu'il ne vit dans la vente des bâtiments de guerre réformés et d'une partie de leur armement, qu'une opération purement commerciale, dont les résultats devaient profiter uniquement, tant au commerce d'aucun acquéreur, qu'au trésor de l'état, au moment où de nouvelles constructions navales allaient être entreprises, le gouvernement suédois était parfaitement dans son droit; mais du jour où il put croire que les bâtiments achetés par la maison de Stockholm et revendus à la maison de Londres étaient destinés effectivement à renforcer les armements maritimes d'une colonie *que l'Espagne considérait encore comme insurgée contre son autorité* et dont l'indépendance politique n'avait encore été reconnue par aucun des grands états européens, la Suède, alliée ou amie de l'Espagne, ne pouvait se prêter, sans porter atteinte au principe de la neutralité, à ce que ses vaisseaux de guerre réformés concourussent à accroître les forces navales du Mexique.

"Ce ne fut que le 26 décembre 1826 que la Grande-Bretagne signa, à Londres, un traité public avec les états mexicains; dans l'année 1827, *la France, les Pays-Bas, le Hanovre, le Danemark suivi- [193] rent cet exemple, en signant, avec le gouvernement mexicain, des traités de commerce et de navigation; le 28 décembre 1836, enfin, l'Espagne, comprenant l'inutilité de continuer la lutte contre des colonies qui s'étaient séparées d'elle sans retour, conclut avec le Mexique un traité de paix et d'amitié.

"En agissant autrement qu'elle le fit, c'est-à-dire en persistant à repousser les réclamations du chargé d'affaires d'Espagne, la Suede, nous le répétons, aurait manqué aux devoirs et aux obligations de la neutralité. C'eût été se prêter à favoriser l'un des deux belligérants (et, dans le cas actuel en 1825, le belligérant favorisé était un peuple dont la condition politique était encore indéterminée), que de ne pas prendre les mesures nécessaires pour que les bâtiments de guerre réformés, vendus avec un demi-armement, n'allassent pas accroître les forces navales d'une colonie de l'Espagne insurgée contre l'autorité du roi catholique."

Offending vessels not simply contraband of war.

It may possibly be asserted that the construction, or the fitting out, or the arming, or the equipment by neutrals of vessels of war intended for the service of a belligerent were, before the Treaty of Washington, to be regarded as standing upon the same footing with the dealings in articles *ordinarily [194] esteemed contraband of war. Should this be the case, the United

States might content themselves with a reference to the history of the legislation of the two countries, as a complete answer to such an assertion. While the subjects or citizens of either country have been left by law free to manufacture or sell muskets or gunpowder, or to export them at their own risk, even if known to be for the use of a belligerent, the legislatures, the executives, and the judiciaries of both Great Britain and the United States have joined the civilized world in saying that a vessel of war, intended for the use of a belligerent, is not an article in which the individual subject or citizen of a neutral State may deal, subject to the liability to capture as contraband by the other belligerent. Such a vessel has been and is regarded as organized war—more clearly organized war than was that unarmed expedition which left
[195] Plymouth in 1828 for Portugal,[1] and was arrested *by the British navy at the same Terceira to which the Alabama fled to receive the arms and ammunition that she failed to take on board at Liverpool, either because the purposes of the Foreign Office were surreptitiously revealed, or because the insurgent agents had reason to believe that they could evade the law by the construction of the vessel on one side of the river Mersey, the collection of the armament on the other side of it, and the putting them together more than three miles out at sea.

It is not, however, necessary for the United States to rely in this respect upon the action of the several branches of the Governments of the two countries. The question has been considered by several of the leading publicists of the Continent. Ortolan, in his "Diplomatie de la mer,"[2] says, in addition to what has already been cited:

Opinion of Ortolan.

"À part toute prohibition faite législativement par telle ou telle nation, il faut, en droit international, considérer comme des actes décidément contraires à la neutralité, l'équipement, et l'armement et, à plus forte raison, la construction dans les ports neutres de bâtiments de guerre appartenant aux belligérants, ou destinés, par concert ostensible ou dissimulé avec les belligérants par à être remis en leur
[196] pouvoir. Nous croyons fermement *qu'il est impossible d'assimiler de pareils actes à la contrebande de guerre proprement dite et que l'obligation pour un état neutre de s'opposer à ce qu'ils aient lieu sur son territoire est indépendante de toute loi intérieure ou particulière à cet état; que la loi intérieure peut et doit sanctionner cette obligation, mais qu'elle ne saurait ni la créer ni la détruire, parceque c'est une obligation qui résulte uniquement de la loi internationale, laquelle défend d'user, dans un but hostile, du territoire neutre."

And of Heffter.

Heffter,[3] the distinguished German publicist, says to the same effect:

"C'est un devoir général pour les peuples restés spectateurs tranquilles de la lutte, de n'y prendre aucune part active, ni de participer directement aux actes de la guerre. Les gouvernements, les sujets étrangers qui fournissent à l'un des belligérants des secours directs

[1] During the contest in Portugal between Don Miguel and Donna Maria II, an unarmed expedition of the adherents of Donna Maria left Portsmouth, ostensibly for Brazil, but really for the Azores. The British Government of that day pursued it to Terceira, fired into it and broke it up; and they were sustained in the House of Lords by a vote of 126 to 31, and in the House of Commons by a vote of 191 to 78. (Hansard for 1830, Vol. XXIII. See also Annual Register for 1829, and Phillimore's International Law, Vol. I, page 229, *et seq.*) The Tribunal of Arbitration will not fail to observe how differently the powers and duties of the Government were construed by the British Government when it was a question of the disintegration and disruption of the commerce of the United States.

[2] Diplomatie de la mer, Ortolan, tome 2, page 214.

[3] Heffter, *Droit international*, (French translation by Jules Bergson, Paris,) page 296.

commettent une violation du devoir de la neutralité, un acte d'immixion dans les hostilités auquel l'adversaire est en droit de s'opposer par tous les moyens. Dans la pratique on regarde comme de tels actes d'hostilité:

"1°, le transport volontaire des soldats, matelots et autres hommes de guerre;

"2°, la construction dans les ports neutres de vaisseaux de guerre ou de commerce pour le compte de l'ennemi dès leur sortie;

*"3°, le transport volontaire de dépêches de l'un des belligé- [197] rants.

"Ces diverses contraventions, lorsqu'elles sont régulièrement constatées, entraînent la saisie et la confiscation du navire employé au transport. La confiscation s'étend également à la cargaison, si il est établi que les propriétaires avaient connaissance du but illicite du voyage. Toutefois cette pénalité n'est pas toujours exécutée à leur égard avec la même sévérité. En réalité elle constitute un acte de légitime défense auquel le neutre qui se rend complice de l'un des belligérants ne saurait échapper du côté de l'adversaire.

"En dehors des cas qui viennent d'être énumérés, il existe encore un certain nombre d'objets dont le commerce est regardé, d'une manière plus ou moins générale dans la pratique des états, comme prohibé. Il constitute la contrabande de guerre proprement dite."

Case of the Santissima Trinidad.

Without wearying the patience of the Tribunal in the further discussion of this question, it will be assumed that a vessel of war is not to be confounded with ordinary contraband of war. Indeed, the only respectable authority which has been cited even apparently to the contrary, is an observation which Mr. Justice Story thrust into the opinion of the Supreme Court of the United States, upon the case of the Santisima Trinidad.[1] *If that eminent jurist [198] had said that a vessel of war was to be regarded in public law as an article which might be legitimately constructed, fitted out, armed, equipped, or dealt in by a person in the territory of a neutral, with the intent that it should enter the service of a belligerent, subject only to a liability to capture as contraband of war by the other belligerent, the United States would have been forced, with great regret, to ask this tribunal to disregard an opinion so at variance with common sense, and with the whole current of the actions of nations. Happily they are under no necessity of casting an imputation on the memory of one of their brightest judicial ornaments.

During the last war between the United States and Great Britain a privateer, called the Monmouth, was constructed at Baltimore, and cruised against the enemy. After the peace she was stripped of her armament, and converted into a brig. She was subsequently loaded with munitions of war, armed with a portion of her original armament, and sent to Buenos Ayres, (which was then a revolted colony of Spain recognized as a belligerent, but not recognized as an independent government,) to find a market for her munitions of war. The supercargo was also authorized "to sell the vessel to the Government of Buenos Ayres *if he could obtain a suitable price*." He did sell her, and she *went into the service of that Government as a man-of-war. She [199] subsequently put into a port of the United States, and while there enlisted thirty new men, and took with her, when she put to sea, the newly enlisted men, and a tender, which carried some mounted guns and twenty-five men. After this addition to her effective power for in-

[1] 7 Wheaton's Reports, page 283.

jury, assisted by the tender, she captured the Spanish vessel Santisima Trinidad, and carried her cargo into Norfolk, one of the ports of the United States. On the instigation of the Spanish authorities, proceedings were taken for the restitution of this property, on the ground, first, that the Independencia had been originally illegally fitted out, armed, or equipped in the United States; secondly, that she had, after entering the service of Buenos Ayres, illegally recruited men and augmented her force within the United States. The court decreed a restitution of the property on the second ground. Any remarks, therefore, upon the first point were outside of the requirements of the case, and, under the American practice, would be regarded as without authority; but inasmuch as they were made by one of the most eminent writers on public law, they deserve the consideration which they have received. Taking them in connection with the facts as shown in evidence, it is clear that the dis-
[200] tinguished judge intended to con*fine his statement to the case of a vessel of war equipped and dispatched as a commercial venture, without previous arrangement or understanding with the belligerent, and at the sole risk of the owner. "It is apparent," he says, "that she was sent to Buenos Ayres on a commercial venture." The whole of his subsequent remarks turned upon the absence of an intent, in Baltimore, in the mind of the owner, before she sailed, that she should, in any and at all events, whether sold or not, go into the service of the belligerent.

The judges who were brought in contact with the witnesses in that case, and had access to all the original papers, and knew personally both the men and the facts, and who, therefore, had opportunities which are denied to us of judging of the merits of the case, seem to have reached the conclusion that this particular transaction was a purely commercial venture; and they placed the decree of restitution of the captured property upon later violations of law. It may, however, be said that the ordinary experiences of human life show that such deeds border upon the debatable ground between good faith and fraud. The court which decided that case evidently did so on the impressions which the judges received from the particular evidence before them;
[201] for, on the very next *day, the most illustrious of American judges, John Marshall, then Chief Justice of the United States, in the parallel case of the Irresistible, a vessel built at Baltimore, sent to Buenos Ayres, and there commissioned as a privateer, pronouncing the opinion of the same court, declared that the facts as to the Irresistible showed a violation of the laws of the United States in the original construction, equipment, and arming of the vessel; and that, should the court decide otherwise, *the laws for the preservation of the neutrality of the country would be completely eluded.*[1] In justice to the highest court of the United States, these two cases should be read together by all persons wishing to know its views upon the duties of a neutral nation in time of war, since if there be any difference in the principles involved in the two cases, then the true construction of the law is to be found in the carefully considered language of the court in the case of the Gran Para. The cases were both argued in February, 1822: the Gran Para upon the 20th, and the Santisima Trinidad on the 28th. The opinions were delivered in March: that of the Santisima Trinidad on the 12th; that of the Gran Para on the 13th. There can be no doubt that they were considered together in the
[202] consultation-room. Therefore any apparently broad or ill *con-

[1] The Gran Para, 7 Wheaton's Reports, 471.

Effect of a commission of the officer as a vessel of war.

sidered expressions in the opinion rendered on the 12th of March are to be regarded as limited and corrected by the carefully considered expressions of the Chief Justice on the following day.

Having thus demonstrated that the principles for which the United States contend have been recognized by the statesmen, the jurists, the publicists, and the legislators of Great Britain; that they have the approbation of the most eminent authorities upon the continent of Europe; and that they have been regarded by the other Powers of Europe in their dealing with each other, it only remains to show how the liability of the neutral for the acts of cruisers illegally built, or equipped, or fitted out, or armed within its ports, may be terminated.

It has been intimated, in the course of the discussions upon these questions between the two Governments, that it may be said, on the part of Great Britain, that its power to interfere with, to arrest, or to detain either of the belligerent cruisers whose acts are complained of ceased when it was commissioned as a man-of-war; and that, consequently, its liability for their actions ceased.

The United States might well content themselves with calling the attention of the Tribunal of Arbitration to the utter uselessness discussing these questions, if the liability to make com*pensation [203] for the wrong can be escaped in such a frivolous way. It is well known how the several British-built and British-manned cruisers got into the service of the insurgents. Few of them ever saw the line of the coast of the Southern insurgent States. The Florida, indeed, entered the harbor of Mobile, but she passed the blockading squadron as a British man-of-war. In most cases the commissions went out from England—from a branch office of the insurgent Navy Department, established and maintained in Liverpool at the cost and expense of the insurgent (so-called) Government. From this office the sailing orders of the vessels were issued; here their commanders received their instructions; and hence they departed to assume their commands and to begin the work of destruction. They played the comedy of completing on the high seas what had been carried to the verge of completion in England. The parallel is complete between these commissions and those issued by Genet in 1793, which were disregarded by the United States at the instance of Great Britain. If a piece of paper, emanating through an English office, from men who had no nationality recognized by Great Britain, and who had no open port into which a vessel could go unmolested, was potent not only to legalize the depredations of British built and manned cruisers *upon the commerce of the United [204] States, but also to release the responsibility of Great Britain therefor, then this arbitration is indeed a farce. Such, however, cannot be the case.

Opinion of Sir Roundell Palmer.

Sir Roundell Palmer, the Attorney General of Lord Palmerston's Cabinet, as well as of the present Government, well said, in the House of Commons, in 1864, when defending the course of Great Britain as to the Tuscaloosa, a tender of the Alabama, "Can it be said that a neutral Sovereign has not the right to make orders for the preservation of his own neutrality, or that any foreign Power whatever violating these orders, provided it be done willfully or fraudulently, is protected to any extent, by International Law, within the neutral territory, or has the right to complain, on the ground of International Law, of any means which the neutral Sovereign may see fit to adopt for the assertion of his territorial rights?" * * "It is a mere ques-

tion of practical discretion, judgment, and moderation what is the proper way of vindicating the offended dignity of the neutral Sovereign."[1]

The United States do not deny the force of the commission of a man-of-war issuing from a recognized Power. On the contrary, they point with a pardonable pride to the exhaustive [205] language of *Chief Justice Marshall on this subject[2] as evidence of what they understand to be the practice of nations. Nor do they deny that since Great Britain had, however precipitately and unjustly, recognized the existence of a civil war between the United States and the insurgents, and avowed a determination to remain neutral between the parties, she might, without a violation of the law of nations, commit the further injustice of allowing to such vessels of war of the insurgents as had not been built, armed, equipped, furnished, fitted out, supplied, or manned within her territory, in violation of her duty to the United States, the same rights of asylum, hospitality, and intercourse which she conceded to the vessels of war of the United States. They do, however, most confidently deny that the receipt of a commission by a vessel like the Alabama, or the Florida, or the Georgia, or the Shenandoah, exempted Great Britain from the liability growing out of the violation of her neutrality. To this point they are fortunately able to cite two from the many pertinent cases adjudicated in the Supreme Court of the United States, which show directly what the public law in this respect is understood to be, not only by the United States, but also by Spain and by Portugal.

Opinion of Chief Justice Marshall.

[206] *The first is the case of the Santisima Trinidad,[3] the facts of which have already been given. The property for which restitution was claimed in this case was Spanish. The libel was filed by the Spanish Consul at Norfolk on behalf of the owners. The capture was shown to have been made after a commission to the vessel, expressly recognized by the court rendering the decision. Nevertheless, restitution was decreed on the ground of an illegal increase of armament in the neutral territory *after the commission.*

Decision of the Supreme Court of the United States in the cases of the Santisima Trinidad and the Gran Para.

The second case is that of the Gran Para,[4] also already alluded to. The libel was filed by the Consul General of Portugal. The opinion of the court was given by Chief Justice Marshall. The facts are set forth so clearly in the opinion that no other statement is necessary. The Chief Justice, in announcing the judgment of the court, said:

"The principle is now firmly settled that prizes made by vessels which have violated the acts of Congress that have been enacted for the preservation of the neutrality of the United States, if brought within their territory, shall be restored. The only question, therefore, is, Does this case come within the principle?

"That the Irresistible was purchased, and that she sailed out [207] of the port of Baltimore, armed *and manned as a vessel of war, for the purpose of being employed as a cruiser against a nation with whom the United States were at peace, is too clear for controversy. That the arms and ammunition were cleared out as cargo cannot vary the case. Nor is it thought to be material that the men were enlisted in form as for a common mercantile voyage. There is nothing resembling a commercial adventure in any part of the transaction. The vessel was constructed for war and not for commerce. There was no cargo on board but what was adapted to the purposes of war. The crew was

[1] Hansard, 3d series, vol. 174, page 1595.
[2] The Schooner Exchange against McFadden *et al.*, 7 Cranch's Reports, 116.
[3] 7 Wheaton, 283. [4] 7 Wheaton, 471.

too numerous for a merchantman, and was sufficient for a privateer. These circumstances demonstrate the intent with which the Irresistible sailed out of the port of Baltimore. But she was not commissioned as a privateer, nor did she attempt to act as one until she reached the river La Plata, when a commission was obtained, and the crew re-enlisted. This court has never decided that the offense adheres to the vessel, whatever changes may have taken place, and cannot be deposited at the termination of the cruise in preparing for which it was committed; and as the Irresistible made no prize on her passage from Baltimore to the river of La Plata, it is contended that her offense was deposited there, and that the court cannot connect her subsequent cruise with the transactions at Baltimore.

*"If this were to be admitted in such a case as this, the laws [208] for the preservation of our neutrality would be completely eluded, so far as this enforcement depends on the restitution of prizes made in violation of them. Vessels completely fitted in our ports for military operations need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and re-enlisting their crew, to become perfectly legitimate cruisers, purified from every taint contracted at the place where all their real force and capacity for annoyance was acquired. This would, indeed, be a fraudulent neutrality, disgraceful to our own Government, and of which no nation would be the dupe. It is impossible for a moment to disguise the facts that the arms and ammunition taken on board the Irresistible at Baltimore were taken for the purpose of being used on a cruise, and that the men there enlisted, though engaged in form as for a commercial voyage, were not so engaged in fact. There was no commercial voyage, and no individual of the crew could believe there was one. Although there might be no express stipulation to serve on board the Irresistible after her reaching the La Plata and obtaining a commission, it must be completely understood that such was to be the fact. For what other purpose could they have undertaken *this voyage? Everything [209] they saw, everything that was done, spoke a language too plain to be misunderstood.

* * * * * * *

"It is, therefore, very clear that the Irresistible was armed and manned in Baltimore, in violation of the laws and of the neutral obligations of the United States. We do not think that any circumstances took place in the river La Plata, by force of which this taint was removed."

The course of the French Government during the insurrection in the case of the Rappahannock, already referred to, practically asserted the power of the neutral to protect its violated sovereignty, even against a commissioned vessel of war. The British Government itself recognized this principle when it ordered the Alabama to be seized at Nassau, and when it found fault with the Governor of the Cape of Good Hope for not detaining the Tuscaloosa at Cape Town. The principle for which the United States contend has therefore been recognized by Great Britain, Spain, Portugal, France, and the United States.

The principle recognized by France, Great Britain, Spain, Portugal, and the United States.

It is not deemed necessary to add to the forcible views of Chief Justice Marshall in the case of the Gran Para, as to the deposit of the offense of the cruiser. The United States only ask that the same just rules which they, through their highest *judicial officer and most eminent jurist, have established for [210] offenses committed on their own soil, may be applied to the offenses against British neutrality from which they have suffered. The

Deposit of the offense.

Alabama, the Georgia, the Florida, the Shenandoah, and the other insurgent vessels of war made no cruise that was not planned on British soil. Their respective cruises were to last till the independence of the Confederacy should be established. The career of the Florida terminated at Bahia—that of the Alabama off Cherbourg. The Shenandoah and the Georgia came eventually into the possession of the United States. The principal injuries, which will be hereinafter set forth, came from the acts of these vessels. There were, however, other vessels, whose careers and crimes, as well as those of the above-named four, will now be given in detail.

Before proceeding to do so, it will be well to note the points which have been thus far made.

Resume of principles.

The United States trust that they have established to the satisfaction of the Tribunal of Arbitration as against Great Britain—

1. That it is the duty of a neutral to preserve strict and impartial neutrality as to both belligerents during hostilities. (*See the Queen's Proclamation; also extracts from various writers on International Law above cited.*)

[211] *2. That this obligation is independent of municipal law. (*See as above.*)

3. That a neutral is bound to enforce its municipal laws and its executive proclamation; and that a belligerent has the right to ask it to do so; and also the right to ask to have the powers conferred upon the neutral by law increased if found insufficient. (*See the precedents in General Washington's administration; Lord Palmerston's speech of July* 23, 1863; *the opinion of the British Attorney General during the Crimean war; and the United States Special Law of March* 10, 1838.)

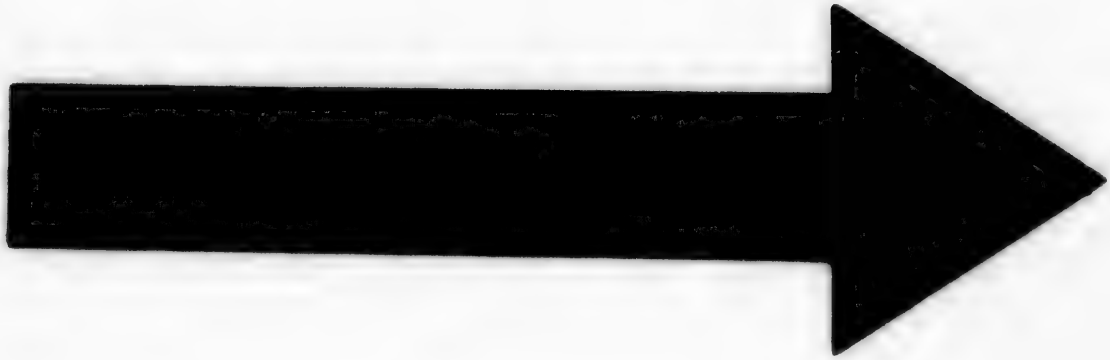
4. That a neutral is bound to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace. (*See 1st Rule of the Treaty; also the Foreign Enlistment Acts of* 1819 *and* 1870; *also the precedents in General Washington's administration; also the writers on International Law who have been cited.*)

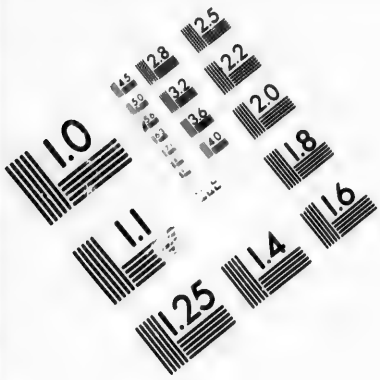
5. That a neutral is bound to use like diligence to prevent the construction of such a vessel. (*See Foreign Enlistment Act of* 1870; *also the action of the United States Government in* 1869; *also the writers on International Law above cited.*)

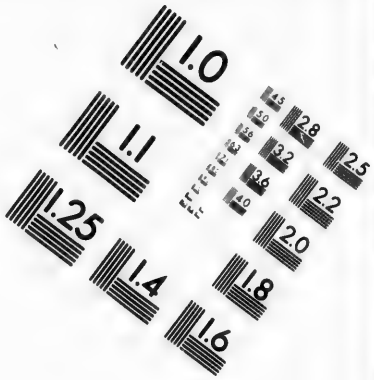
[212] *6. That a neutral is bound to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war against any Power with which it is at peace; such vessel having been specially adapted, in whole or in part, within its jurisdiction, to warlike use. (*See 1st Rule of the Treaty; also the Foreign Enlistment Act of* 1870.)

7. That a neutral may not permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other. (*See 2d Rule of the Treaty, the Foreign Enlistment Act of* 1870, *and the writers on International Law above cited; also the instructions to the British naval forces during the Southern insurrection.*)

8. That a neutral is bound to use due diligence in its ports or waters, to prevent either belligerent from obtaining there a renewal or augmentation of military supplies, or arms for belligerent vessels, or the recruitment of men. (*See 2d Rule of the Treaty; also the precedents of General Washington's administration; also the Foreign Enlistment Acts of* 1819 *and* 1870; *also the Queen's Proclamation.*)







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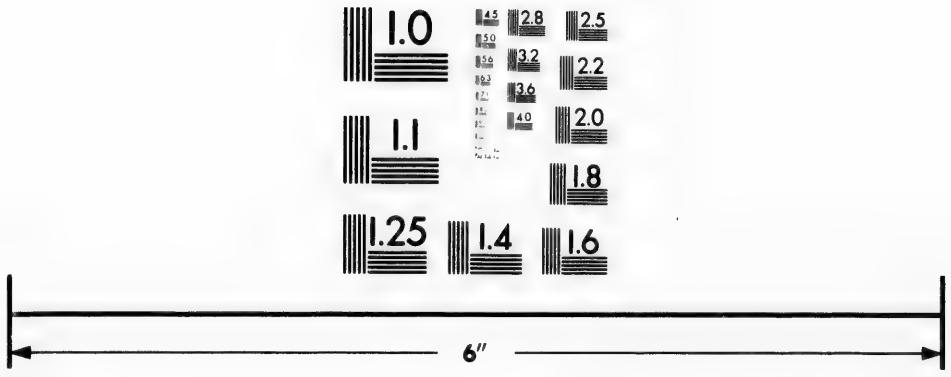

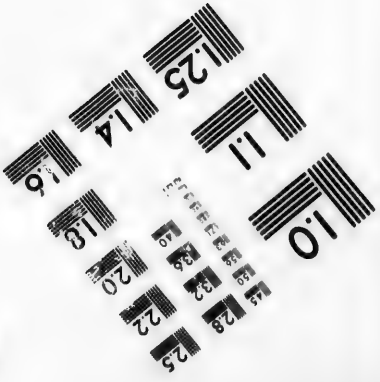

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9. That when a neutral fails to use all the means in its power to prevent a breach of the neutrality of its soil or waters, in any of the foregoing respects, the neutral should make compensation for *the [213] injury resulting therefrom. (*See precedents of General Washington's administration between Great Britain and the United States; treaty of* 1794 *between Great Britain and the United States; treaty of* 1819 *between the United States and Spain; correspondence between Portugal and the United States,* 1817–'22, *and Articles VII and X of the Treaty of Washington.*)

10. That this obligation is not discharged or arrested by the change of the offending vessel into a public man-of-war. (*See the cases of the Santisima Trinidad and the Gran Para, above cited.*)

11. That this obligation is not discharged by a fraudulent attempt of the offending vessel to evade the provisions of a local municipal law. (*See the Gran Para, as above; also Bluntschli and other writers on International Law.*)

12. That the offense will not be deposited so as to release the liability of the neutral even by the entry of the offending vessel in a port of the belligerent, and there becoming a man-of-war, if any part of the original fraud continues to hang about the vessel. (*See the Gran Para, as above.*)

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*PART IV.

WHEREIN GREAT BRITAIN FAILED TO PERFORM ITS DUTIES AS A NEUTRAL.

"There is no doubt that Jefferson Davis and other leaders of the South have made an army; they are making, it appears, a navy."—*Speech of Mr. Gladstone, Chancellor of the Exchequer, October* 7, 1862.

Admissions of British Cabinet Ministers.

"It has been usual for a power carrying on war upon the seas to possess ports of its own in which vessels are built, equipped, and fitted, and from which they issue, to which they bring their prizes, and in which those prizes when brought before a court are either condemned or restored. But it so happens that in this conflict the Confederate States have no ports except those of the Mersey and the Clyde, from which they fit out ships to cruise against the Federals; and having no ports to which to bring their prizes, they are obiged to burn them on the high seas."—*Speech of Earl Russell, Principal Secretary of State for Foreign Affairs, April* 26, 1864.

"Her Britannic Majesty has authorized her High Commissioners and Plenipotentiaries to express in a friendly spirit the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels."—*Treaty of Washington, Article I.*

The extracts which are placed at the head of this division of the Case of the United States are at once evidence of the facts which will now be set forth, and a condensation of the line of argument which those facts logically suggest. The United States summon no less illustrious a person than the present Prime Minister of England, to prove, not only that the insurgents were engaged in the year 1862 in making a navy, but that the fact was known to the gentlemen who then
[216] constitu*ted Her Majesty's Government. They place on the stand as their next witness Her Majesty's Principal Secretary of State for Foreign Affairs during the whole period of the rebellion, to prove where the insurgents were constructing that navy, and why they were constructing it in the Mersey and the Clyde; and further, to prove that these facts, also, were known at the time to the gentlemen who then constituted Her Majesty's Government. And lastly, they lay before the Tribunal of Arbitration the graceful and kindly testimony of the regret of Her Majesty's Government that the escape[1] of the cruisers, which were built in Great Britain, with the knowledge of the Government, and which constituted that navy, should have resulted in the subsequent destruction of the property of citizens of the United States.

In discussing this question, except so far as may be absolutely necessary for the protection of the interests which they are bound to
[217] guard, the *United States will not attempt to disinter from the grave of the past the unhappy passions and prejudices, and to revive the memory of the injuries, often great and sometimes petty, which caused such poignant regret, such wide-spread irritation, and

[1] "I wish the word 'escape' had not been found in the apology, as it is termed in describing the exit from our ports of the Alabama and other ships of that kind. I cannot help thinking that was an unguarded expression, which may affect the course of the future arbitration. I can easily imagine that in some minds the word 'escape' would be construed unfavorably to this country, for it means that something has got away which might have been retained. We speak of the escape of a prisoner; and the meaning of the term is that there was power to prevent the escape, and that the escape happened in spite of it."—*Lord Cairn's (ex-Chancellor) speech in the House of Lords, June* 12, 1871. *See London Times, June* 13, 1871.

such deep-seated sense of wrong in the United States. Over much of this feeling the kindly expression of regret in the Treaty of Washington has forever cast the mantle of oblivion.

The reports of the diplomatic and consular officers of the United States, made from the British dominions to their Government during the war, which are printed in the volumes which will accompany this case, are full of proof of a constant state of irritating hostility to the United States, and of friendship to the insurgents in the several communities from which they are written. These dispatches are interesting, as showing the facilities which the complicity of the community often, if not always, gave to the schemes of the insurgents for violating the sovereignty of Great Britain. The reports from Liverpool, Nassau, Bermuda, and Melbourne are especially interesting in this respect, and tend to throw much light on the causes of the differences which are, it is to be hoped, to be forever set at rest by the decision of this Tribunal.

British ports the base of insurgent operations; a partial hospitality shown to the insurgents; a branch of their Government established in Liverpool; their Government vessels officially aided in evading the blockade and in furnishing them with arms, munitions, and means for carrying on the struggle.

*As soon as the authorities who were directing at Richmond the [218] fortunes of the insurgents were sure that their right to carry on a maritime war would be recognized by Great Britain, their Secretary of the Navy recommended to Mr. Jefferson Davis to send an agent to Great Britain for the purpose of contracting for and superintending the construction of men-of-war; and Mr. James Dunwoody Bullock, who had been an officer in the Navy of the United States, was, in accordance with that recommendation, sent there in the summer of 1861, and entered upon his duties before the autumn of that year. Mr. North, also formerly of the United States Navy, was empowered "to purchase vessels"[1] for the insurgents; and Mr. Caleb Huse, formerly of the Ordnance Department of the Army of the United States, was sent to London for "the purchase of arms and munitions of war."[1] Mr. Bullock, Mr. North, and Mr. Huse continued to discharge their duties during most of the struggle, and served the purposes of those who sent them there, with intelligence and activity.

The means for carrying on these extensive operations were to be derived from the proceeds of the cotton crop of the South. It will probably *be within the personal recollection of the several [219] gentlemen, members of the Tribunal, that in the year 1860 the world was dependent upon the fields of the insurgent States for a large portion of its supply of cotton, and that, when the blockade was established by the United States, a large part of the crop of 1860 was still unexported.[2] This, and all subsequent crops that might be produced during the struggle, would yield their value in gold as soon as landed in Liverpool.

The insurgent agents took advantage of this fact. They secured, through their assumed authority as a Government, the control of so much as might be necessary for their purposes, and they early made arrangements for a credit in Liverpool upon the faith of it.

[1] Walker to Green, 1st July, 1861, Vol. VI, page 30.

[2] "It was estimated that only about 750,000 bales at most of the crop of 1860 remained on hand in the South when the blockade began. The crop of 1861 was about 2,750,000 bales—a little more than half the total quantity consumed in 1860—and this supply, or so much of it as could be properly picked, cleaned, and baled, would, together with what remained from the previous year, have been available for exportation in the winter and spring of 1861-'62. The quantity actually sent abroad, however, up to July or August, 1862, was reckoned not to exceed 50,000 bales, the great bulk of which, but not the whole, went to England."—*Bernard's Neutrality of Great Britain, page* 286.

It so happened that there was at Charleston, at that time, a well-established commercial house, doing business under the name of John Fraser & Co. The head of this firm was George A. Trenholm, of Charleston. Another prominent member [220] *was Charles K. Prioleau, also a citizen of the United States. Before or about the time the insurrection broke out, and, as the United States believe, in anticipation of it, this house established a branch in Liverpool, under the name of Fraser, Trenholm & Co. Prioleau was dispatched thither to take charge of the Liverpool business, and became, for purposes that may easily be imagined, a naturalized British subject. George A. Trenholm remained in Charleston, and, in due course of time, became the Secretary of the insurgent Treasury, and a member of the so-called Government at Richmond. An arrangement was made by which the cotton of the insurgent authorities was to be sent to Fraser, Trenholm & Co., to be drawn against by the purchasing agents of the insurgents.[1]

The firm of Fraser, Trenholm & Co.

The first amount (five hundred thousand dollars) was placed to their credit in Liverpool, somewhere about the month of May, or early in June, 1861; and, under the name of "depositories," Fraser, Trenholm & Co. remained a branch of the Treasury of the insurgent Government.

[221] *Thus there was early established in Great Britain a branch of the War Department of the insurgents, a branch of their Navy Department, and a branch of their Treasury, each with almost plenary powers. These things were done openly and notoriously. The persons and places of business of these several agents were well known to the communities in which they lived, and must have been familiar to the British officials. If there was any pretense of concealment in the outset it was soon abandoned.

On the 22d of July, 1861, Huse writes to the officer in charge of the insurgent Ordnance Department, complaining of the activity of the agents of the United States in watching and thwarting his movements. "It is difficult," he says, "for a stranger to keep his actions secret when spies are on his path." He says that he shall have ready, by the 1st of August, some of the goods that had been ordered on the 17th of the previous April, and more by the 1st of October, and that "the shipping of the articles will be left in the hands of the Navy Department."[2]

On the 18th of September, the steamer "Bermuda" ran the blockade, and arrived at Savannah with "arms and munitions on board."[3] [222] She came *from Fraser, Trenholm & Co., consigned to John Fraser & Co. Information of the character and purposes of this steamer, and of the nature of her freight, had been given to Lord Russell by Mr. Adams on the 15th of the previous August,[4] and he had declined to "interfere with the clearance or sailing of the vessel."[5] On the fourth day after her arrival at Savannah her consignees offered to charter her to the insurgents, and the offer was accepted."[6]

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[1] "Of twenty steamers, which were said to have been kept plying in 1863 between Nassau and two of the blockaded ports, seven belonged to a mercantile firm at Charleston, who had a branch house at Liverpool, and through whom the Confederate Government transacted its business in England." "The name of the Charleston firm was John Fraser & Co.; that of the Liverpool house, Fraser, Trenholm & Co. Of the five members of the house, four, I believe, were South Carolinians, and one a British subject."—*Bernard's Neutrality of Great Britain, page* 289 *and note.* The British subject referred to by Mr. Bernard was Prioleau, naturalized for the purpose.

[2] Huse to Gorgas, Vol. VI, page 33.

[3] Lawton to Cooper, 20th September, 1861, Vol. VI, page 36.

[4] Adams to Russell, Vol. I, page 760.

[5] Russell to Adams, Vol. I, page 762.

[6] Benjamin to John Fraser & Co., 27th September, 1861, Vol. VI, page 37.

The experience of the "Bermuda," or the difficulties which she encountered in running the blockade, seem to have induced the insurgent authorities to think that it would be well to have some surer way for receiving the purchases made by their agents in Liverpool. The stringency of the blockade established by the United States, and the nature of the coast that was blockaded, made it necessary to have a set of agents in the West Indies also.

Character of the blockaded coast.

The coast of the United States, from Chesapeake Bay to the Mexican frontier, is low, with shoaly water extending out for some distance to sea. A range of islands lies off the coast, from Florida to Charleston, and islands also lie off Wilmington and *the coast to the north of it. The waters within these islands are [223] shallow, affording an inland navigation for vessels of light draught. The passages to the sea between the islands are generally of the same character. The outlying frontier of islands, or of shallow waters, is broken at Wilmington, at Charleston, and at Savannah. At these three points large steamers can approach and leave the coast; but these points were at that time guarded by the blockading vessels of the United States, so as to make the approach difficult. Vessels not of light draught and great speed were almost certain of capture; while vessels of such draught and speed could not carry both coal and a cargo across the Atlantic.

To avoid this risk it was resolved to send the purchases which might be made in England to Nassau in British bottoms, and there transship them into steamers of light draught and great speed, to be constructed for the purpose,[1] which could carry coal enough for the short passage into the waters that connected with either Charleston, Savannah, or Wilmington. The first order from Richmond that is known to have been given for such a shipment is dated the 22d of July, 1861.[2]

Geographical situation of Nassau and Bermuda.

The attention of the Tribunal of Arbitration is *invited to the [224] accompanying map, showing how admirably the British ports of Nassau and Bermuda were adapted for the illegal purposes for which it was proposed to use them. Nassau was surrounded by a cluster of British islands, so that even a slow-sailing blockade-runner, pressed by a pursuing man-of-war, could in a short time reach the protection of British waters. Bermuda had the advantage of being more directly off the ports of Wilmington and Charleston. Neither Nassau nor Bermuda, however, was more than two days distant from the blockaded ports for the swift steamers that were employed in the service.[3]

On the 4th of October, 1861, Mr. Benjamin, writing from Richmond, and signing himself as "Acting Secretary of War," addressed Mr. Mallory as "Secretary of the Navy," and asked if he could "spare an officer from his department to proceed to Havana and take charge of funds there, to be used by agents of this department in the purchase of small-arms and ammunition."[4]

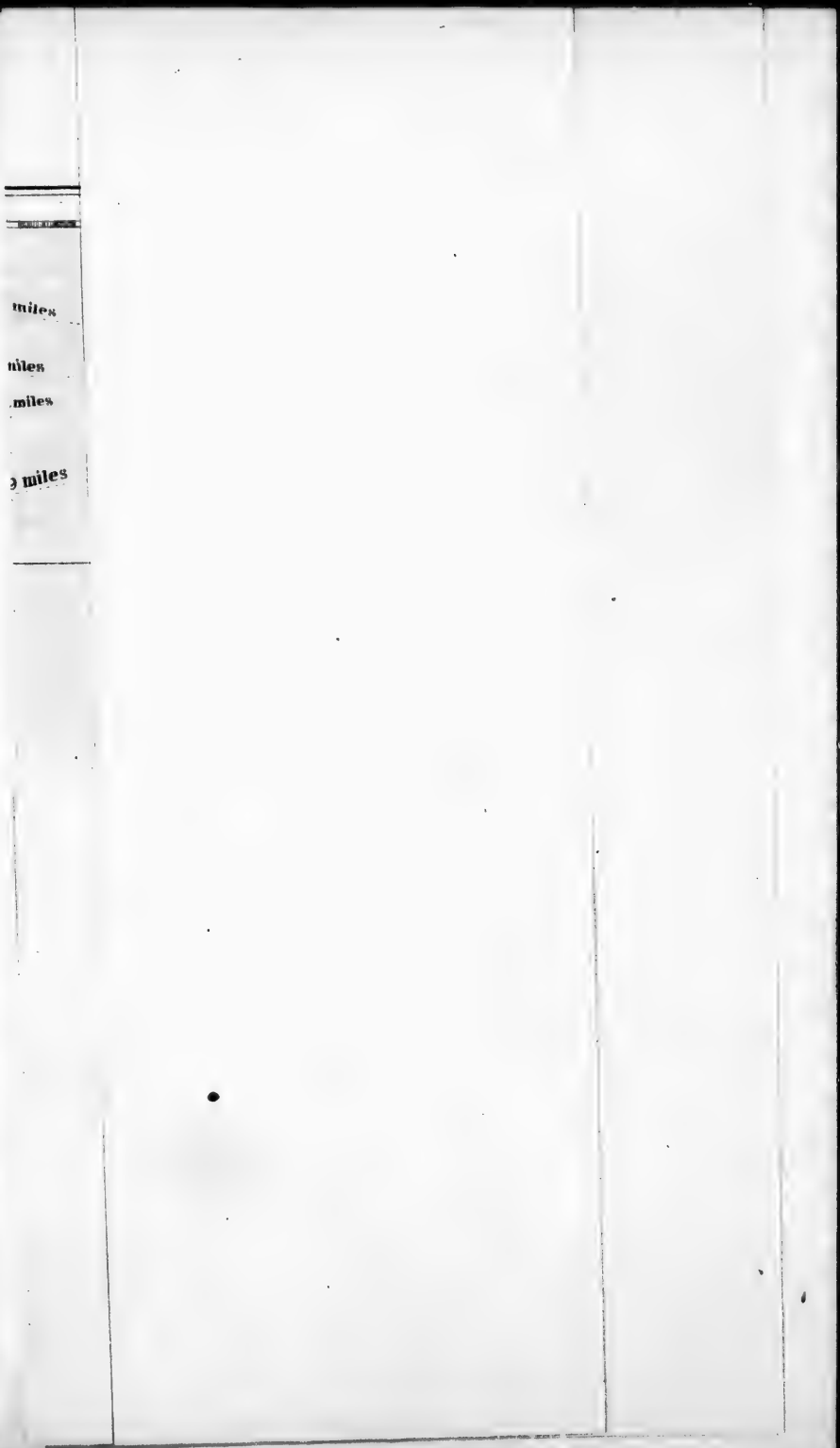
*Mr. Lewis Heyliger, of New Orleans, was apparently desig- [225] nated for this purpose. On the 30th of November, 1861, he takes

[1] Huse to Gorgas, 15th March, 1862, Vol. VI, page 69.

[2] Walker to Huse and Anderson, Vol. VI, page 31.

[3] "The British Island of New Providence, in the Bahamas, became the favorite resort of ships employed in these enterprises. Situated in close neighborhood to the coast of Florida, and within three days' sail of Charleston, it offered singular facilities to the blockade-runners. The harbor of Nassau, usually quiet and almost empty, was soon thronged with shipping of all kinds; and its wharves and warehouses became an entrepot for cargoes brought thither from different quarters. Agents of the Confederate Government resided there, and were busily employed in assisting and developing the traffic.—*Bernard's Neutrality of Great Britain, page* 299.

[4] Benjamin to Mallory, Vol. VI, page 39.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THE
S.E.COAST
of the
UNITED STATES
and its relation
to the
BRITISH WEST INDIA COLONIES
U N I T E D S T A T E S
MEXICO
CUBA
BA
HONDURAS
NICARAGUA
GUATEMALA
WILMINGTON
CHARLESTON
SAVANNAH
P. Royal
St Mary's
Jacksonville
St Augustine
St Joseph
St Mark's
Pensacola
Mobile
Mississippi
New Orleans
Chandeleur Is
Mississippi R.
Ship I.
Sabine Pass
Galveston
Matagorda
Corpus Christi
Rio Grande
Brazos Santiago
Cedar Keys
Tampa Bay
Oyster Bay
C. Florida
C. Sable
Tortugas
Key West
Cay Sal
Abaco
Andros
NASSA
515 miles
500 miles
Havana
Matanzas
Pine Is
C. Catoche
Sisal
Campeche
Tampico
Vera Cruz
Tabasco
Caymans
Swan Is
G. of Honduras
Bay Is
Trexillo
Blewfields
Greytown
Note,
The shaded parts are British possessions
90°
80°
30°
20°
10°
West of 80° Greenwich

80°
70°
60°
WILMINGTON
C. Fear
674 miles
772 miles
834 miles
869 miles
P. Royal
Bermuda
500 miles
515 miles
570 miles
BAHAMA ISLANDS
Abaco
Florida
Eleuthera
NASSAU
Cat I.
S. Salvador
Andros
Cay Sal
Samana Cay
Mariguana
Acklins Is
Caicos Is
Turks I
Inagua Is
CUBA
Nipe
Windward Channel
Caymans
Gonaives
Samana Gulf
HAITI
Port Prince
S. Domingo
Mona Pass
Virgin Is
Anegada
Porto Rico
St Thomas
Anguilla
Santa Cruz
Barbuda
St Christophers
Antigua
Montserrat
Guadaloupe
Dominica
Martinique
St Lucia
St Vincent
Barbados
Grenadines
Tobago
Trinidad
Gulf of Paria
Caracas
P. Cabello
Maracaybo
St Marta
Cartagena
NEW GRANADA
VENEZUELA
Curaçoa
20°
10°
West of 80° Greenwich

a letter from Mr. Benjamin to Mr. Helm, the agent of the insurgents at Cardenas, in Cuba, saying that he is "an active and accomplished business man;" that he is to aid Helm., "whether in the disposal of the cotton or the arrangements for the shipments;" and that "the articles first in importance, and to be sent in preference to everything else, are small-arms and *cannon* powder."[1]

Heyliger went to Cuba, and in a few days after was transferred to Nassau to take charge of "the British Steamer Gladiator, Commander G. G. Bird, with a cargo for the Confederate States."[2] He remained there as the agent, treasury depositary, and representative of the insurgents during the rebellion.

The Gladiator was a steamer bought and fitted out in England under an agreement made at London, October 24, 1861, between Mr. T. O. Stock, a subject of Her Majesty, and Mr. Caleb Huse.[3] The evident object of this agreement was to enable her to sail under the British flag, although owned by the insurgents. She was to take out five hundred tons of goods, and was "to proceed to a port [226] in the *Confederate States or an intermediate port." No concealment of her object or destination was made in England.[4] She arrived at Nassau from London on the 9th of December, 1861.[5]

What was done at Nassau.

The day after she arrived there a United States vessel of war came into the port. Heyliger, finding that this vessel would not leave, and that therefore the Gladiator, which was slower than the man-of-war, could not leave with safety, represented to the British authorities that such a course "would tend to cut off the trade" which the insurgents desired to divert to Nassau, and that he thought "some step should be adopted to remind him [the commander] that he is infringing on the laws of hospitality." He reported this to Richmond and added, "I have reason to know that these arguments have not been without their effect, inasmuch as the matter was incidentally discussed at a meeting of the Council the other day; and I really believe that in the course of a week or two some action will be taken to impress the captain of the enemy's vessel with the conviction that his absence will be preferable to his company." "We have succeeded," he continued, "in obtaining a very important modification of the existing laws, viz: *the privilege of* [227] *breaking bulk and transshipment.*"[6] *That modification was all that the insurgents wanted. That privilege converted the port of Nassau into an insurgent port, which could not be blockaded by the naval forces of the United States. Further stay of the United States vessels of war was therefore useless. The United States ask the Tribunal to find that this act, being a permission from the British authorities at Nassau, enabling a vessel chartered by the insurgents, and freighted with articles contraband of war, to diverge from its voyage, and to transship its cargo in a British port, when not made necessary by distress, was a violation of the duties of a neutral.

On the 27th of January, 1862, Maffitt, an officer in the service of the insurgents, (the same who afterward commanded the Florida,) was sent to take command of the Gladiator as an insurgent vessel,[7] (although under British colors,) and on the 30th of January, 1862, a portion of the

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[1] Benjamin to Helm, Vol. VI, page 43.
[2] Helm to Heyliger, 20th December, 1861, Vol. VI, page 51.
[3] See the agreement, Vol. VI, page 42.
[4] Adams to Seward, Vol. I, page 769.
[5] Whiting to Seward, 10th December, 1861, Vol. VI, page 44.
[6] Heyliger to Benjamin, 27th December, 1861, Vol. VI, page 55.
[7] Benjamin to Maffitt, 27th January, 1862, Vol. VI, page 57.

Gladiator's valuable cargo was transshipped to the "Kate," a small steamer sailing under British colors, and eventually all went in the same way. In the dispatch announcing the transfer to the "Kate," Heyliger said: "You may readily imagine how intensely disgusted the Yankees are at this partiality, as they style it. It is called another flagrant violation of neutral rights. * * My relations with *the authorities here are of the most friendly character. I receive [228] many marked attentions, which I value as going to show the increased cordiality of feeling toward the Confederate Government."[1]

The United States are not able to say what "effect" the colonial authorities of Nassau induced Heyliger to think would come from his "arguments." They point out, however, to the Tribunal of Arbitration the fact, that in about one month after that time, viz, on the 31st day of January, 1862, Earl Russell informed the Lords Commissioners of the Admiralty that "during the continuance of the present hostilities * * * * no ship of war or privateer belonging to either of the belligerents shall be permitted to enter or remain in the port of Nassau, or in any other port, roadstead, or waters of the Bahama Islands, except by special leave of the Lieutenant Governor of the Bahama Islands, or in case of stress of weather."[2]

An order more unfriendly to the United States, more directly in the interest of the insurgents, could not have been made, even if founded upon Heyliger's friendly intimations to the Colonial Authorities. Under the construction practically put upon it, the vessels of war of the United States were excluded from this harbor for any *purpose, [229] while it was open for free ingress and egress to vessels of the insurgents, purchased, or built, and owned by the authorities at Richmond, bringing their cotton to be transshipped in British bottoms to Fraser, Trenholm & Co., in Liverpool, and taking on board the cargoes of arms and munitions of war which had been dispatched thither from Liverpool. The Tribunal of Arbitration will not fail to observe that this was no British commerce which had existed before the war, and which the neutral might claim the right to continue. It was to a large extent the commerce of the authorities at Richmond—carried on in their own vessels, and for their own benefit—and consisted of the export of cotton from the South on account of the so-called Government, and the return of arms, munitions of war, and quartermaster stores from Great Britain, for the purpose of destroying the United States—a nation with which Great Britain was at peace. The United States confidently insist that Great Britain, by shielding and encouraging such a commerce, violated its duties as a neutral toward the United States.

The United States denied permission to deposit coal at Nassau.

It is a most unpleasant duty of the United States to call the attention of the Tribunal of Arbitration to the fact that, at the very time of this affair of the Gladiator, another matter was going *on in the same port, which furnished [230] a commentary on the ideas of neutrality entertained by the Colonial Authorities.

The day after the arrival of that vessel, the United States Consul at Nassau wrote to his Government thus: "The coal which is being landed here for Government has caused great excitement among the Nassau masses, and a deputation visited Governor Nesbitt yesterday to remonstrate against its being landed."[3] The remonstrances were successful.

[1] Heyliger to Benjamin, 30th January, 1862, Vol. VI, page 48.
[2] Vol. VI, page 175.
[3] Whiting to Seward, Vol. VI, page 44; Vol. I, page 696.

On the same day the Colonial Secretary wrote to the Consul that the coal could be admitted only "on the express condition and understanding that such coal should not afterward be reshipped or otherwise used in any manner which may, in the opinion of the law authorities of the Colony, involve a breach of Her Majesty's Proclamation of the 13th of May last, *and particularly that such coal shall not be used for the purpose of coaling, or affording facilities for coaling, at this port, the vessels of war of the United States Navy, during the continuance of the hostilities.*"[1]

The sincerity of the desire of the Colonial Authorities to obey Her Majesty's Proclamation may be estimated from the following facts:

[231] 1. That that Proclamation inhibited Her Majesty's *subjects from "breaking, or endeavoring to break, any blockade lawfully or actually established by or on behalf of either of the said contending parties;"[2] yet the Colonial Authorities finding that the Gladiator, which had been chartered to break a blockade established by the United States, would probably be intercepted by the vessels of the United States, permitted the cargo to be transshipped into smaller steamers, with the avowed purpose of breaking that blockade; 2. That Her Majesty's Proclamation also inhibited British subjects from "carrying military stores or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties;" yet the Colonial Authorities welcomed the Gladiator, sailing under the British flag with contraband of war in violation of the Proclamation, and permitted her to shift her illegal cargo into other vessels, in like manner using the British flag for the purpose of transporting it to and on account of a belligerent. 3. That Her Majesty's Proclamation made no mention of coal, and that coal is not regarded by Her Majesty's Government as an article necessarily contraband of war;[3] yet the

[232] Government of the *United States was forbidden by the same authorities, in the same week, to deposit its coal at Nassau, except upon the condition that it would not use it.

The United States have no reason to suppose that either of these partial decisions met with the disapproval of Her Majesty's Government.

On the contrary, Earl Russell, on the 8th of January, 1862, in reply to a complaint from Mr. Adams that the port of Nassau was used as a depot of supplies by the insurgents, officially informed that gentleman that he had received "a report from the receiver general of the port of Nassau *stating that no warlike stores have been received at that port*, either from Great Britain or elsewhere, and that no munitions of war have been shipped from thence to the Confederate States."[4] The United States with confidence assert, in view of what has been already shown, that, had Earl Russell seriously inquired into the complaints of Mr. Adams, a state of facts would have been disclosed entirely at variance with this report—one which should have impelled Her Majesty's Government to suppress what was going on at Nassau. The foregoing facts were all within the reach of Her Majesty's Government, although at that time not within the reach of the

Complaints to Earl Russell and his reply.

[233] Gov*ernment of the United States. The failure to discover them, after Mr. Adams had called attention to them, was a neglect of the diligence in the preservation of its neutrality, which was "due,"

[1] Thompson to Whiting, Vol. VI, page 45.
[2] Vol. I, page 44.
[3] Lord Granville to Count Bernstorff, 15th September, 1870.
[4] Russell to Adams, Vol. VI, page 57.

from Great Britain to the United States; and it taints all the subsequent conduct of Great Britain toward the United States during the struggle.

On the 31st day of the same month, instructions issued from the Foreign Office, prescribing the amount of hospitalities to be extended to the belligerents.

These instructions have already been referred to. They provided that:

Instructions as to hospitalities to the belligerents.

1. No ship of war or privateer of either belligerent was to be permitted to enter any port, roadstead, or water in the Bahamas except by special leave of the Lieutenant Governor, or in case of stress of weather; and in case such permission should be given, the vessel was nevertheless to be required to go to sea as soon as possible, and with no supplies except such as might be necessary for immediate use. 2. No ship of war or privateer of either belligerent was to be permitted to use British ports or waters as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment. 3. Such ships or privateers entering British waters were to be required to depart within twenty-four hours after entrance, except *in case of stress of weather, or re- [234] quiring provisions or things for the crew or repairs; in which cases they were to go to sea as soon as possible after the expiration of the twenty-four hours, taking only the supplies necessary for immediate use; they were not to remain in port more than twenty-four hours after the completion of necessary repairs. 4. Supplies to such ships or privateers were to be limited to what might be necessary for the subsistence of the crew, and to enough coal to take the vessel to the nearest port of its own country or to some nearer destination; and a vessel that had been supplied with coal in British waters could not be again supplied with it within British jurisdiction, until after the expiration of three months from the date of the last supply taken from a British port.[1]

Lord Palmerston's threats.

Almost simultaneously with the announcement by Earl Russell of an imaginary condition of affairs at Nassau, Lord Palmerston stated to Mr. Adams that "it would not do for the United States ships of war to harass British commerce on the high seas, under pretense of preventing the Confederates from receiving things that are contraband of war."[2] Thus, Great Britain, in the month of January, 1862, through Earl Russell and Lord Palmerston, and the instructions to the Admiralty ex*cluding United States vessels of [235] war from the port of Nassau, except by permission of the Governor, virtually said to the United States: "You complain that the insurgents make illegal use of Nassau, to your injury, in violation of the Queen's Proclamation, and of our duties as a neutral. We deny the fact; at the same time we exclude your vessels from that port, the place where you can best establish the truth of your allegations, and we warn you not to attempt to prove them by examining too closely, on the high seas, the vessels which sail under the British flag."

Having now shown how the operations of the insurgents began at Nassau, and how they were facilitated by the co-operation and complicity of the local authorities, it will not be necessary to trespass on the patience of the Tribunal of Arbitration by a similarly minute examination of the doings at that port for the rest of the year 1862. Other vessels, freighted with contraband of war, followed the Gladiator. The Economist and the Southwick came closely upon her track, and Heyliger was

[1] Vol. IV, page 175. [2] Earl Russell to Lord Lyons, Vol. II, page 591.

directed to do with their cargoes as he had done with the Gladiator's.[1] Huse was also instructed to continue his purchases, and to send to the West India Islands, where the steamers could break bulk.[2] Huse
[236] called the attention of his prin*cipals to the efficiency of the blockade; said that the vessels which brought the cargoes across the Atlantic could not enter the blockaded ports; urged them to continue the system of transshipment; and complained of the activity of the United States officials.[3] It was considered important to have a naval officer in charge of the transshipments, and Maffitt was detailed for the purpose.[4] He arrived there on or about the 21st of May, and reported that he had assumed command of the Manassas, [Florida;] which had arrived there from Liverpool on the 28th day of April; said that his "ambition was great;" and promised to give "annoyance to the enemy."[5] In May the supply of coal for the insurgent vessels fell short, and Heyliger went to Bermuda to buy some.[6] The steps taken about this time for the detention of the Florida will be alluded to later.

The cargoes of contraband of war that were thus transshipped were entered on the manifests as for St. John's, New Brunswick. It could not but have been well known at the custom-house that this was a fraud; yet the customs authorities winked at the fraud, and gave the vessels clearances as British vessels sailing for British ports.[7]

Contraband of war fraudulently cleared at Nassau for British ports.

[237] *Heyliger continued to report the transshipment and forwarding of these arms and military supplies. He noticed the arrival and departure of the "Kate," and other vessels, on account of the insurgent authorities, and on the 26th of July, 1862, he reported that the "Steamer Scotia, a private venture,"[8] was about to leave with a large supply of rifles, powder, and other ammunition. He did not report any other "private venture," so far as known to the United States.

The operations of Huse during this year, and his shipments through Heyliger, are detailed as follows in a letter to Colonel Gorgas, insurgent Chief of Ordnance, to the insurgent Secretary of War, dated December 3, 1862.[9] "The purchase of ordnance and ordnance stores in foreign markets on Government account are made by Major Caleb Huse, C. S. Artillery, who resides in London, and whose address is No. 38 Clarendon Road, Notting Hill, London, West. Major Huse was detailed for this duty in April, 1861. * * * He has purchased arms to the amount of 157,000, [stands?] and large quantities of gunpowder, some artillery, infantry equipments, harness, swords, percussion caps, saltpeter, lead, &c. In addition to ordnance stores,
[238] using a rare forecast, he has purchased and *shipped large supplies of clothing, blankets, cloth, and shoes for the quartermaster's department, without specific orders to do so. * * To pay for these purchases, funds have been from time to time sent to him by the Treasury Department, on requisition from the War Department, amounting in the aggregate to $3,095,139 18. These have been wholly inadequate to his wants, and have fallen far short of our requisitions. He was consequently in debt at latest advices to the

Resume for the year 1862.

[1] Benjamin to Heyliger, 22d March, 1862, Vol. VI, page 71.
[2] Benjamin to Huse, 10th March, 1862, Vol. VI, page 68.
[3] Huse to Gorgas, 15th March, 1862, Vol. VI, page 69.
[4] Randolph to Heyliger, 11th April, 1862, Vol. VI, page 72.
[5] Maffitt to Randolph, 21st May, 1862, Vol. VI, page 83.
[6] Heyliger to Randolph, 28th June, 1862, Vol. VI, page 87.
[7] Hawley to Seward, 27th June, 1863, Vol. VI, page 127.
[8] Heyliger to Randolph, Vol. VI, page 92.
[9] Gorgas to Seddon, Vol. VI, page 104.

amount of £444,850, a sum equivalent, when the value of exchange is considered, to $5,925,402 of our currency. * * An agent, Mr. Norman S. Walker, was lately dispatched with $2,000,000 in bonds of the Confederate States. The instructions to Mr. Walker direct him to return to Bermuda, after the disposition of the bonds in England, and after conference with Major Huse. He is to remain there as a resident disbursing agent, and is, in conjunction with Mr. S. G. Porter, charged with the transfers of the cargo of the 'Harriet Pinkney,' now there, and other ships hereafter to arrive, to the ports of the Confederate States. * * * A large part of the cargoes have been landed at Nassau, and thence transmitted to the ports of the Confederate States in fast steamers. Their destination has lately been changed to Bermuda, where several most valuable cargoes are now awaiting transportation. It appears to me to be the appro*priate duty of the Navy Department to assist in the running in of these cargoes; but if the burden of it is to be borne entirely by the War Department, it is highly important that light-draught steamers should be purchased, and used solely for the transportation of cargoes from Bermuda." [239]

Base changed to Bermuda.

This change to Bermuda had been recommended by Huse in the previous August.[1] The reason given was that "the port of Nassau had become dangerous;" and he had appointed as agent there "Mr. S. G. Porter, a gentleman highly recommended by Commander J. D. Bullock." Gorgas inquired of the insurgent Secretary of War whether Huse's appointment of Porter should be approved,[2] and the reply is to be found in the above extract. Walker went there before January 1, 1863,[3] and on the 9th day of February, 1863, it was reported that Bermuda was a good depot for the purpose, and that the insurgent authorities "had then three steamers running there."[4]

Having thus shown that the branch of the insurgent War Department established in Great Britain had, during the years 1861 and 1862, purchased arms, ammunition, and supplies to the amount of about nine millions of dollars, and that the branch of their Treasury [240] established at Liverpool had during the same time paid on account of these purchases over three millions of dollars, and that vessels either belonging to or chartered by the insurgent authorities were occupied as transports, (in violation of the Foreign Enlistment Act of 1819,) in carrying this large quantity of war material from British ports to the insurgents, and in bringing back cotton, the property of the insurgent authorities, to be used in making payments therefor, it is now necessary to see what the branch of their Navy Department, under the direction of Bullock, was engaged in during the same period.

The United States are not able to trace these transactions with the minuteness with which they have been able to narrate the doings of Huse and Heyliger. The correspondence of those who assumed to direct the naval affairs of the insurgents has not come into the possession of the United States, as did the confidential correspondence of other agents heretofore cited. Bullock's operations, however, were on so large a scale that it will not be difficult to follow him. In doing this the United States will confine themselves to general statements, reserving the particulars for the remarks that will be made upon the career of each cruiser.

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[1] Huse to Gorgas, 4th August, 1862, Vol. VI, page 93.
[2] Gorgas to Randolph, 1st November, 1862, Vol. VI, page 103.
[3] Gorgas to Huse, 1st January, 1863, Vol. VI, page 107.
[4] Gorgas to Huse, 9th February, 1863, Vol. VI, page 111.

Bullock, as has been said, established himself in Liverpool in
[241] the summer of 1861. The United *States Consul re- What was done at Liverpool by Bullock.
ports him on the 20th of September as "residing in private lodgings in Liverpool," and as being "chiefly in communication with Fraser, Trenholm & Co., whose office he visits daily." Prioleau, one of the firm of Fraser, Trenholm & Co., says that he occupied for a year after his arrival a room in their office.[1]

It is probable that as early as October, 1861, he had made the contracts for the two gun-boats which were afterward known as the Florida and the Alabama. The drawings of the Alabama were signed by the Lairds, who built her, on the 9th of October, 1861. The United States have no means for determining the date when the contract was made with Fawcett, Preston & Co., for the Florida. Their Consul at Liverpool has stated that on his arrival at the consulate in November, 1861, his attention was called by the acting consul to this vessel, then called the Oreto, and to the Alabama. It is clear, therefore, that the work was advanced at that time.[2] Prioleau also testifies that he introduced Bullock to Fawcett, Preston & Co., for the purpose of making the contract for the Florida.[3]

By the 4th of February, 1862, the Florida was so nearly completed that the Consul at Liverpool wrote, "She is now tak-
[242] ing in her coal, and appear*ances indicate that she The Florida.
will leave here the latter part of the week without her armament." Her gun-carriages were soon taken on board, in pieces, some in a rough state, and were put in the hold,[4] and a day or two later she received her provisions, and the crew was shipped. The steamer Bahama preceded her by a few days with her armament, but reached Nassau after her.

When the Florida sailed she took a crew of fifty-two men and some guns,[5] and was in every respect a man-of-war except that her armament was not in place. It was conclusively shown at Nassau that she might have been fitted for battle in twenty-four hours after leaving the dock in the Mersey.[6]

The vessel in that condition was consigned by Bullock to Heyliger.[7] The connection of Bullock with the vessel from the beginning is established by this act, as well as by the evidence of Prioleau. The connection of Fraser, Trenholm & Co. is shown by the admission of Prioleau, and by the fact that a member of that firm accompanied her on her trial trip and on her departure.[8]

Mr. Adams called the attention of Earl Russell to the charac-
[243] ter and destination of this vessel on *the 29th of February, and again on the 25th of March, 1861. Her Majesty's Government had ample time to ascertain her character and to detain her. They did go through the form of an examination which, seen in the light of subsequent events, reads like a farce.[9]

The work on the Alabama progressed more slowly than that on the Florida, possibly because it was a larger vessel. She was launched on the 15th of May, and made her trial trip on the The Alabama
12th of June.[10] "The money for her was advanced by Fraser, Trenholm

[1] Vol. VI, page 185.
[2] Dudley to Edwards, Vol. III, page 17.
[3] Dudley to Seward, Vol. VI, page 186.
[4] Dudley to Seward, Vol. II, page 593.
[5] Report of Board of Customs, Vol. II, page 605.
[6] Captain Hickley's affidavit, Vol. VI, page 263.
[7] Heyliger to Randolph, 2d May, 1862, Vol. VI, page 76.
[8] Dudley to Edwards, Vol. III, page 17.
[9] Vol. II, pages 595 and 604.
[10] Dudley to Seward, Vol. III, page 1.

& Co."[1] Captain Bullock was "all the time in communication with Fawcett, Preston & Co., who fitted out the Oreto, and with the Lairds, who were fitting out this vessel," and went "almost daily on board the gun-boat, and seemed to be recognized as in authority." It was even said in Liverpool that he was to command her.[2] Mr. Adams, on the 23d of June, invited Earl Russell's attention to this vessel, and an examination was ordered. The examiners reported to the Lords Commissioners of Her Majesty's Treasury that it was "most apparent that she is intended for a ship of war," and that "the description of her in the communication of the United States Consul is *most correct, with the exception that her engines are not constructed on the oscillatory principle."[3] [244]

The evidence of the criminal character of the vessel became so overwhelming that Her Majesty's Government was at length induced to give an order for her detention. Before the order reached Liverpool she had escaped. She ran down to Moelfra Bay, on the coast of the Isle of Anglesey, and there took on board twenty or thirty men from the tug Hercules, with the knowledge of the British officials at Liverpool. She then sailed to the Azores, where she was met by the Agrippina from London and the Bahama from Liverpool. These vessels brought her officers, her armaments, and her coal. The transshipments were made, and then the British ensign was hauled down, and the insurgent flag hoisted.

It is not deemed necessary to examine further, in this connection, the evidence showing the palpable character of this vessel, especially as Lord Russell, in the course of the discussion which ensued, admitted that "*it is undoubtedly true that the Alabama was partly fitted out in a British port.*"[4] That evidence will be discussed more at length in its appropriate place. For the present, the United States only aim to satisfy the Tribunal that, flagrant *as was the violation of neutrality in the case of the Alabama, it was but a part of the great scheme which was set on foot when Huse, Bullock, and Fraser, Trenholm & Co., combined together in Liverpool. [245]

The operations of Captain Bullock were manifest about this time in quite another quarter of the globe. The insurgent steamer Sumter put into Gibraltar in January, 1862, out of coal, and not being able immediately to obtain any was obliged to remain there until United States men-of-war arrived in those waters. Deeming it impossible to escape she was then offered for sale, and when the sellers came to make title, the officer in charge produced "a power of attorney from a certain Bullock, who styles himself senior naval officer in Europe."[5] Great Britain, in spite of the protests of the United States officials,[6] permitted a sale to take place,[7] and it is not improbable that, if the sale was *bona fide*, the money went to the insurgent agents to swell the fund for the payment of the Alabama and the Florida, then in the Mersey.

The Sumter at Gibraltar.

The Florida at Nassau.

When the Florida reached Nassau, it was again found necessary to depend upon the Liverpool combination for funds.

The insurgent Secretary of the Navy making *application to [246]

[1] Dudley to Edwards, Vol. III, page 18.
[2] Dudley to Adams, Vol. III, page 6.
[3] Report of Board of Customs, Vol. III, page 7.
[4] Earl Russell to Mr. Adams, 29th September, 1864, Vol. III, page 299.
[5] Sprague to Adams, 9th December, 1862, Vol. II, page 507.
[6] Sprague to Freeling, Vol. II, page 511.
[7] Sprague to Adams, Vol. II, page 515.

their Secretary of the Treasury for fifty thousand dollars, to fit out and equip the C. S. Steamer "Manassas," [Florida,] "now at Nassau,"[1] was answered that "the Department had funds in England," and that he could have "a bill of exchange on England for the amount required."[2] Mallory accepted the suggestion, and requested Memminger to "transmit to Nassau, through Messrs. J. Fraser & Co., of Charleston, a bill of exchange in favor of Lieutenant John N. Maffitt, for fifty thousand dollars, ($50,000,) or its equivalent in pounds,"[3] which was done.

Contracts for constructing six iron-clads.

The construction and dispatch of these vessels were by no means all that was planned in Liverpool during that year. On the 21st day of August, 1862, Mallory, the insurgent Secretary of the Navy, wrote Mr. Jefferson Davis: "A contract has been made *for the construction abroad* and delivery of six iron-clad steam-vessels of war, upon plans and specifications prepared by this department, which, with the outfits to be furnished, together with six complete extra engines and boilers, are estimated to cost about $3,500,000."[4] The estimates annexed to this letter are to the same amount. Thus it appears
[247] that, before the 1st of *January, 1863, Bullock had dispatched from Great Britain two formidable cruisers, the Alabama and the Florida, to prey upon the commerce of the United States, had sold another cruiser at Gibraltar, and had possibly turned the proceeds into the Treasury of the insurgents, at the office of Fraser, Trenholm & Co., and had, by himself or through another agent, made some sort of a contract for the construction of six iron-clads; and that Fraser, Trenholm & Co. had provided the funds for these vessels, and also for what was necessary in order to complete the fitting out of the Florida at Nassau.

The Sumter at Trinidad.

Before proceeding further in this history, it is better to pause to take note of two other acts of the Colonial Authorities, which, so far as known, were not censured by Great Britain. The first of these was the hospitality extended to the Sumter in Trinidad, in August, 1861. She was allowed to remain five days in port, and to "supply herself with coals and other necessary outfits."[5] The second case was the reception of the Florida at Nassau, in 1863. The Florida steamed into Nassau on the morning of the 26th of January, in that year. What took place is thus described by an insurgent writer: "This seems to be our principal port of entry, and the
[248] amount of money *we throw into the hands of the Nassauites *probably* influences their sentiments in our favor. *We took on board coal and provisions to last us for several months.*"[6]

The Florida at Nassau.

This history has now arrived at the time when the United States were in a position to confirm to Great Britain all, and more than all, that Mr. Adams had represented to Earl Russell as to the course of the insurgents in Liverpool, and to place in the hands of Her Majesty's Government the thread for the discovery of all the violations of British sovereignty, and of all the injuries to the United States perpetrated on British soil, which have been set forth in this paper. On the 19th of January, 1863, Mr. Seward transmitted to Mr. Adams "a copy of some treasonable correspondence of the insurgents at Richmond, with their agents abroad, which throws a flood of

Mr. Adams represents the foregoing facts to Earl Russell.

[1] Mallory to Memminger, 26th May, 1862, Vol. VI, page 84.
[2] Memminger to Mallory, 27th May, 1862, Vol. VI, 85.
[3] Mallory to Memminger, 27th May, 1862, Vol. VI, page 85.
[4] Vol. VI, page 96. See also, on the same point, Mallory to Mason, 30th October, 1862, Vol. I, page 573.
[5] Bernard to Seward, Vol. II, page 485.
[6] Journal of Confederate Steamer Florida, Vol. VI, page 335.

light upon the naval preparations they are making in Great Britain."[1] On the 9th day of February, 1863, Mr. Adams inclosed this correspondence to Earl Russell, with a note in which he said—what could be said without the least exaggeration—"These papers go to show a deliberate attempt to establish within the limits of this Kingdom a system of action in direct hostility to the Government of the *United States. [249] This plan embraces not only the building and fitting out of several ships of war under the direction of agents especially commissioned for the purpose, but the preparation of a series of measures under the same auspices for the obtaining from Her Majesty's subjects the pecuniary means essential to the execution of those hostile projects. * * * Taken as a whole, these papers serve most conclusively to show that no respect whatever has been paid in her own realm by these parties to the neutrality declared by Her Majesty at the outset of these hostilities; and that, so far as may be in their power, they are bent on making her Kingdom subservient to their purpose of conducting hostilities against a nation with which she is at peace."[2]

Lord Russell declines to act.

Lord Russell delayed his answer to this communication exactly one month. On the 9th day of March, 1863, he made a reply, the substance of which was that Her Majesty's Government would not examine into the truth of Mr. Seward's and Mr. Adams's allegations, because, even if they were true, the papers which had been submitted by Mr. Adams went "merely to show that the agents of the so-called Confederate States resident in this country [Great Britain] have received instructions from their own Government *to endeavor to raise money on securities of that Government in England, and to enter into contracts for the purchase of munitions of war, and for the building of iron-clad vessels; but there is no *proof* in these papers that the agents referred to have as yet brought themselves within the reach of any criminal law of the United Kingdom."[3] [250]

Inefficiency of the Foreign Enlistment Act.

In order fully to comprehend the force of this answer, it is necessary to ask the Tribunal to pause, for the purpose of inquiring into what had taken place between the two Governments as to alleged defects in the Foreign Enlistment Act, and as to the necessity of amending it so as to give the Government greater powers.

It was found when the Foreign Enlistment Act of 1819 came to be put into operation, under the direction of a Government inspired by unfriendly feelings toward the United States, that there were practical and multiplying difficulties in the way of using it so as to prevent the departure of the cruisers. Earl Russell, as early as March, 1862, in reply to an earnest representation[4] made by Mr. Adams under instructions, said that "*the duty of nations in amity with each other is not to suffer their good faith to be violated by evil-disposed persons within their borders, merely from the inefficiency of their prohibitory policy.*"[5]

*Within a few months after this the Alabama escaped from the port of Liverpool, and never returned. The openness and the audacity with which this was done seemed at one time to induce the British Cabinet to entertain the idea of amending the Foreign Enlistment Act. [251]

On the 19th day of December, 1862,[6] Lord Russell, in reply to what

[1] Seward to Adams, Vol I, page 546.
[2] Adams to Russell, Vol. I, page 562.
[3] Vol. I, page 578.
[4] Adams to Russell, Vol. I, page 30.
[5] Russell to Adams, Vol. I, page 533.
[6] Russell to Adams, Vol. I, page 667.

he called Mr. Adams's "demand for a more effective prevention for the future of the fitting out of such vessels from British ports," informed him that Her Majesty's Government were of "opinion that certain amendments might be introduced into the Foreign Enlistment Act, which, if sanctioned by Parliament, would have the effect of giving greater power to the Executive *to prevent the construction in British ports of ships destined for the use of belligerents.*" He also said that he was ready at any time to confer with Mr. Adams, and to listen to any suggestions which he might have to make by which the British Foreign Enlistment Act and the corresponding Statute of the United States might be made more efficient for their purpose.

Propositions to amend the Foreign Enlistment Act.

Mr. Adams communicated with his Government, and, having obtained instructions, informed Lord Russell that his "sugestions of possible amendments to the enlistment laws in order to [252] make *them more effective had been favorably received. Although the law of the United States was considered as of very sufficient vigor, the Government were not unwilling to consider propositions to improve upon it." Lord Russell replied that, since his note was written, the subject had been considered in Cabinet, and the Lord Chancellor had expressed the opinion that the British law was sufficiently effective, and that under these circumstances he did not see that he could have any change to propose.[1]

Propositions declined by Great Britain.

The United States are unable to state what amendments to the Foreign Enlistment Acts of the two countries the British Government might have proposed had they not changed their minds between December, 1862, and March 1863. It is to be presumed, from the use of the word "*construction*" in Lord Russell's note, that it was in contemplation to make some proposition to remedy a supposed defect in the British statute as to the *construction* of a vessel intended to carry on war, as distinguished from the "*equipping, furnishing, fitting out, or arming*" such a vessel. It was understood to be the opinion of the British lawyers that the construction of such a vessel was not an offense under the act of 1819. It is also possible that Her Majesty's Government may [253] have *desired to give the Executive in Great Britain some power similar to that possessed by the Executive of the United States for the arrest of vessels so constructed. As the proposal for negotiations on the subject was withdrawn, it is impossible to do more than conjecture what was contemplated.

From the hour when Lord Russell informed Mr. Adams that the Lord Chancellor was satisfied that the British laws were sufficiently effective, the British Government resisted every attempt to change the laws and give them more vigor.

Mr. Adams again, on the 26th of March, 1863, sought an interview with Lord Russell on the subject of the rebel hostile operations in British territory. What took place there is described by Lord Russell in a letter written on the following day to Lord Lyons:[2] "With respect to the law itself, Mr. Adams said either it was sufficient for the purposes of neutrality, and then let the British Government enforce it; *or it was insufficient, and then let the British Government apply to Parliament to amend it.* I said that the cabinet were of

Propositions renewed and declined.

[1] Adams to Seward, Vol. I, page 668.

[2] Vol. I, page 585. See also Mr. Hammond's letter to Messrs. Lamport and Holt and others, Vol. I, page 602; also Lord Palmerston's speech already cited, Vol. IV, page 530.

opinion that the law was sufficient, but that legal evidence could not always be procured; that the British Government had done everything in its power to execute the law, *but I admitted that the cases of* *the Alabama and Oreto were a scandal, and, in some degree, a reproach to our laws.*" [254]

The Tribunal of Arbitration will thus see that about three weeks before Earl Russell made his extraordinary official reply to the representations of Mr. Adams, he had informed Mr. Adams "that the Lord Chancellor had expressed the opinion that the British [neutrality] law was sufficiently effective, and that, under these circumstances, he did not see that he could have any change to propose"[1] in it. It will also now be observed that when that declaration was made, Mr. Adams's note of February 9, 1863, with the proof of the complicity of the insurgent agents in England, had been in Earl Russell's portfolio four days. It will also be observed that that proof established, or afforded to Earl Russell the clue by which he could, and, as the United States say, should have satisfied himself—1. "That contracts were already made for the construction of iron-clad 'fighting-ships' in England."[2] 2. That Fraser, Trenholm & Co. were the "depositaries" of the insurgents in Liverpool, and that the money in their hands was "to be applied to the contracts."[3] 3. That they (F., T. & Co.) were to pay purchases made by Mr. *Huse and other agents.[4] 4. That other contracts for the con- [255] struction of vessels besides those for the six iron-clads had been taken by parties in Great Britain.[5] 5. That parties in England were arranging for an insurgent cotton loan, the proceeds of which were to be deposited with Fraser, Trenholm & Co. for the purpose of carrying out all these contracts.[6]

When the United States found that the proof of such aggravated wrong was not deemed worthy of investigation by Her Majesty's Government, because it contained no statements which could be used as evidence to convict a criminal before an English jury,[7] they were most reluctantly forced from that time forward, throughout the struggle, to believe that no complaints would be listened to by Her Majesty's Government which were not accompanied by proof that the persons complained of had brought themselves "within reach of the criminal law of the United Kingdom;" that the penal *provisions of the [256] Foreign Enlistment Act of 1819 were to be taken by Great Britain as the measure of its duty as a neutral; and that no amendment or change in that act was to be made with the assent of the existing Government.

These proceedings were an abandonment, in advance, of "due diligence."

They earnestly and confidently insist before this tribunal, that this decision of Her Majesty's Government was in violation of its obligations toward the United States; that it was an abandonment, in advance, not only of that "due diligence" which

[1] Vol. I, page 668.
[2] Mallory to Mason, Vol. I, page 573.
[3] Memminger to Spence, Vol. I, page 574.
[4] Memminger to Fraser, Trenholm & Co., Vol. I, page 574; and same to same, Vol. I, page 575.
[5] Memorandum No. 11, in Vol. I, page 572.
[6] Benjamin to Mason, Vol. I, page 564. Memminger to Mason, Vol. I, page 565. Memminger to Spence, Vol. I, page 574. Memminger to Fraser, Trenholm & Co., Vol I, page 574.
[7] It is supposed to be a principle of English law that a person accused of crime has the right to have the witnesses against him subjected to a personal cross-examination. The absurdity of Earl Russell's position is shown by the fact that every witness whose correspondence was inclosed in Mr. Adams's note of February 9, 1863, was then in Richmond, behind the bayonets of General Lee's army.

is defined in the Treaty of Washington as one of the duties of a neutral, but of any measure of diligence, to restrain the insurgents from using its territory for purposes hostile to the United States.

Encouraged by the immunity afforded by these several decisions of Her Majesty's Government, the insurgent agents in Great Britain began to extend their operations.

The Georgia.

Early in April, 1863, a steamer, called the Japan, which was afterward known as the Georgia, left the Clyde, "with intent to depredate on the commerce of the United States."[1] This vessel had been publicly launched on the 10th of the previous January as an insurgent steamer, at which time a Miss North, daughter of a Captain North, of one of the Confederate States, officiated [257] as priestess, and christened the craft* "Virginia."[2] "Some seventy or eighty men, twice the number that would be required for any legitimate voyage, were shipped at Liverpool for this vessel, and sent to Greenock."[3] A small steamer called the "Alar," belonging to a British subject, was loaded with a large supply of guns, shell, shot, powder, &c.,"[4] and dispatched to meet her. The two vessels met off the French coast; the "Alar" was made fast alongside the "Japan," and in twenty-four hours the whole of the guns and ammunition were transferred.[5] The "Japan" then dropped her Oriental name, hoisted the flag of the insurgents, and steamed away; one day's work after leaving the Clyde having converted her into an armed cruiser. It was not, however, until the 23d of the following June that her British register was canceled and the transfer made to foreign owners.[6]

The Alexandra.

Early in March, 1863, Miller & Son, the builders of the Florida, launched, at their yard in Liverpool, a new gun-boat, to be called the Alexandra.[7] The evidence of the hostile uses for which this vessel was intended was so overwhelming that proceed- [258] ings were instituted against her for a violation of *the Foreign Enlistment Act.[8] In the trial of this case it was clearly proved that the Alexandra was a man-of-war, and that she was constructed for the purpose of carrying on hostilities against the United States.[9] But the judge instructed the jury that a neutral might "make a vessel and arm it, and then offer it for sale"[10] to a belligerent; and that, *a fortiori*, "if any man may build a vessel for the purpose of offering it to either of the belligerent Powers who is minded to have it, may he not execute an

[1] Mr. Adams to Earl Russell, Vol. II, page 666.
[2] Underwood to Seward, 16th July, 1863, Vol. VI, page 503.
[3] Dudley to Mr. Seward, Vol. II, page 665.
[4] Vol. II, page 666.
[5] Mahon's affidavit, Vol. II, page 673.
[6] Mr. Adams to Earl Russell, 7th July, 1863, Vol. II, page 677.
[7] Dudley to Seward, 11th March, 1863, Vol. II, page 258.
[8] See Vol. V, pages 1 to 470.
[9] "The evidence as to the building and fittings of the ship proved that she was strongly built, principally of teak-wood; her beams and hatches, in strength and distance apart, was greater than those in merchant vessels; the length and breadth of her hatches were less than the length and breadth of hatches in merchant vessels; her bulwarks were strong and low, and her upper works were of pitch-pine. At the time of her seizure workmen were employed in fitting her with stanchions for hammock nettings; iron stanchions were fitted in the hold; her three masts were up, and had lightning conductors on each of them; she was provided with a cooking apparatus for 150 or 200 people; she had complete accommodation for men and officers; she had only stowage room sufficient for her crew, supposing them to be 32 men; and she was apparently built for a gun-boat, with low bulwarks, over which pivot-guns could play. The commander of Her Majesty's ship Majestic, stationed at Liverpool, said that she was not intended for mercantile purposes." (*Neutrality of Great Britain during the American Civil War, by Mountague Bernard, M. A.*, page 353, note 1.)
[10] Vol. V, page 128.

order for it?" He also instructed them that "to 'equip' is 'to furnish with arms;'" "in the case of a ship, especially, it is to furnish and complete with arms;"[1] that "'equip,' 'furnish,' 'fit out,' or 'arm,' all mean precisely the same *thing;" and he closed that branch of the in- [259] structions by saying, "the question is whether you think that this vessel was fitted. Armed she certainly was not, but was there an intention that she should be finished, fitted, or equipped, in Liverpool? Because, gentlemen, I must say, it seems to me that the Alabama sailed away from Liverpool without any arms at all; merely a ship in ballast, unfurnished, unequipped, unprepared; and her arms were put in at Terceira, not a port in Her Majesty's Dominions. The Foreign Enlistment Act is no more violated by that than by any other indifferent matter that might happen about a boat of any kind whatever." The jury gave a verdict without delay for the gun-boat. An appeal on this construction of the statute was taken to a higher court. The rulings of the judge on the trial were not reversed, and the decision stood as the law of England until and after the close of the rebellion, and still stands as the judicial construction of the act of 1819.

The rulings in the Alexandra emasculated the Foreign Enlistment Act.

Thus, after the political branch of Her Majesty's Government had announced its purpose of limiting its duties to the enforcement of the Foreign Enlistment Act, and had practically stripped that act of all features except those relating to the prosecution of offenders as criminals, the judicial branch of that Government emasculated it by a ruling *which openly authorized the [260] construction of new Alabamas and of new Floridas.

Contracts were also made, some time in the year 1862, for the construction, at Glasgow, of a formidable vessel, known as the Pampero. Mr. Dudley reported that the cost of the construction was to be something over £300,000.[2] This vessel was seized at Glasgow for an alleged violation of the Foreign Enlistment Act. On the trial, which took place in 1864, it appeared that the Scottish courts were not disposed to follow the English courts in depriving the Foreign Enlistment Act of all force. The insurgents, therefore, abandoned the attempt to use the Pampero as a cruiser, and ceased to contract for the construction or fitting out of vessels within the Scottish Kingdom. A similar course in the English courts might have produced similar results in England.

Lairds' iron-clad rams.

About the same time the arrangements were made with the Lairds for the construction, at Birkenhead, opposite Liverpool, of the two iron-clads which were afterward known as "Lairds' iron-clads," or "Lairds' rams." The keel of one of them, as has been already said, was laid in the same stocks from which the Alabama was launched.[3] These vessels were most formidable, and were *"pushed [261] forward with all possible dispatch. The men were at work night and day upon them." The machinery and guns were made simultaneously with the hull, and it was reported that "by the time she is launched they will be ready to be placed in her."[4]

Their construction was originally ordered from Richmond, and they were superintended by Captain Bullock,[5] who was at that time in frequent correspondence with Mr. Mallory "about building the two above-named and other war vessels in England," "and about the money to pay for the same."[5] "The drawings for them were in the office of Fraser, Trenholm & Co., as early as June, 1862, in Captain Bullock's

[1] Vol. V, page 129.
[2] Dudley to Seward, Vol. II, page 201.
[3] Dudley to Seward, Vol. II, page 315.
[4] Dudley to Seward, Vol. II, page 316.
[5] Younge's deposition, Vol. II, page 330.

hands."[1] By the early part of April, 1863, "the hulls were complete, and the sides were covered with slabs of teak-wood about twelve inches thick." Early in June, 1863, one of the vessels had begun to receive her iron armor plates, "about four inches thick." "The deck of each vessel was prepared to receive two turrets."[2] "Each ram had a stem, made of wrought iron, about eight inches thick, projecting about five feet under the water line, and obviously intended for the pur-
[262] pose of penetrating and destroying other *vessels."[3] These facts, and others, were communicated by Mr. Adams to Earl Russell in a note dated July 11, 1863.[3] Commenting upon them Mr. Adams said: "A war has thus been practically conducted by a portion of her people against a Government with which Her Majesty is under the most solemn of all national engagements to preserve a lasting and durable peace." On the 16th of July, Mr. Adams sent to Lord Russell further evidence of the character of these vessels.[4] On the 25th of July, he again wrote him on the subject, with fresh proof of their purposes.[5] On the 14th of August he again wrote to Earl Russell with "further information;" said that he regretted to see "that the preparation * * * is not intermitted;" and added: "It is difficult for me to give to your Lordship an adequate idea of the uneasiness and anxiety created in the different ports of the United States by the idea that instruments of injury, of so formidable a character, continue to threaten their safety, as issuing from the ports of Great Britain, a country with which the people of the United States are at peace."[6] On the 3d of September Mr. Adams again earn-
[263] estly returned to *the subject. He wrote to Earl Russell, inclosing "copies of further depositions relating to the launching and other preparation of the second of the two vessels of war from the yard of Messrs. Laird, at Birkenhead."[7] He said that he believed there was "not any reasonable ground for doubt that these vessels, if permitted to leave the port of Liverpool, will be at once devoted to the object of carrying on war against the United States of America," and he closed by saying that he had been directed "to describe the grave nature of the situation in which both countries must be placed, in the event of an act of aggression committed against the Government and the people of the United States by either of these formidable vessels." The new evidence inclosed in this letter related only to the fact that the second ram was launched, and cannot be said to have strengthened the case as previously presented. Again, on the 4th of September, Mr. Adams sent to the Foreign Office evidence to show the preparation for immediate departure of one of these vessels.[8] Late in the afternoon of the 4th, after the note had been dispatched to Earl Russell and a copy of it sent to Mr. Seward, Mr. Adams received from Earl Russell a note, dated the 1st of September, saying that *"Her Ma-
[264] jesty's Government are advised that they cannot interfere in anyway with these vessels."[9] On the 5th Mr. Adams replied, expressing his "profound regret at the conclusion to which Her Majesty's Government have arrived;" and added: "It would be superfluous in me to

[1] Younge's deposition, Vol. II, page 331.
[2] Chapman's affidavit, Vol. II, page 333.
[3] Adams to Russell, Vol. II, page 325.
[4] Adams to Russell, Vol. II, page 336.
[5] Adams to Russell, Vol. II, page 341.
[6] Vol. II, page 346-'7.
[7] Adams to Russell, Vol. II, page 353.
[8] Adams to Russell, September 4, 1863, Vol. II, p. 358.
[9] Russell to Adams, Vol. II, page 360.

point out to your Lordship that this is war."[1] On the 8th of September Mr. Adams received a short note, written in the third person, in which it was said "instructions have been issued which will prevent the departure of the two iron-clad vessels from Liverpool."[2] It would appear from the British Blue Book that the instructions for their detention "had scarcely been sent" when Mr. Adams's note of the 3d of September was received at the Foreign Office.[3]

Their detention not an abandonment of the lax construction of the duties of a neutral.

There was little in all this transaction to lead the United States to hope for a returning and better sense of justice in the British Government. For they could not but observe, when comparing the dates of the receipt of the several notes which passed between Lord Russell and Mr. Adams, that when Her Majesty's Government, after a delay of six weeks, answered that it could not interfere with these vessels, it was in possession of convincing evidence of their character and destina*tion, which was not [265] materially, if at all, strengthened by the evidence contained in Mr. Adams's letter of the 3d of September. They were therefore forced to conclude that, in detaining the vessels, Her Majesty's Government was influenced, not by change in their opinion as to the force or effect of the Foreign Enlistment Act, or as to the duty of Great Britain toward the United States, but solely by a desire to avoid, in the interest of peace, what Mr. Adams called "the grave nature of the situation in which both countries must be placed, in the event of an act of aggression committed against the Government and people of the United States by either of these formidable vessels." The United States fully and earnestly shared this desire with Great Britain, and they were relieved from a state of painful suspense when the dangers which Mr. Adams pointed out were averted. But they would have felt a still greater relief could they have received at that time the assurance, or could they have seen in the transaction any evidence from which they could assume that the Executive Branch of the British Government was no longer of the opinion expressed in Lord Russell's note of September 1, as to its duties in regard to evidence such as that inclosed in Mr. Adams's previous notes and no longer intended to regard the Foreign Enlistment. *Act, as expounded by the court in the Alexandra case, as the [266] measure of its international duties.

The contracts with Arman for the construction of vessels in France.

Extensive as were the arrangements made from Liverpool by the insurgent agents, at that time, for the construction in Great Britain of vessels of war intended to carry on war against the United States, their operations were not confined to Great Britain. Captain Bullock, without shifting his office from Liverpool, signed an agreement, "for the account of his principals," on the 16th of April, 1863, with Lucien Arman, ship-builder at Bordeaux, whereby Mr. Arman engaged "to construct four steamers of 400 horse-power, and arranged for the reception of an armament of from ten to twelve cannon." As it was necessary in France to obtain the consent of the Government to the armament of such vessels within the limits of the Empire, Mr. Arman informed the Government that these vessels were "intended to establish a regular communication between Shanghai, Yedo, and San Francisco, passing the strait of Van Dieman, and also that they are to be fitted out, should the opportunity present itself, for sale to the Chinese or Japanese Empire." On this representation permission was given to arm them, the armament of two to be supplied by

[1] Adams to Russell, Vol. II, page 365.
[2] Russell to Adams, Vol. II, page 366.
[3] Layard to Stuart, Vol. II, page 363.

Mr. Arman at Bordeaux, and that of the other two by Mr. Vorus at Nantes.

[267] *On the 16th of July, 1863, another agreement was made in Bordeaux between Mr. Arman and Mr. Bullock, "acting for the account of principals." Arman agreed to construct two screw steamships of wood and iron, with iron turrets, of 300 horse-power. Bullock was to supply the armament; the ships were to be finished in six months; one-fifth of the price was to be paid in advance.

Under these contracts Bullock is said to have paid Arman 5,280,000 francs.[1] But one of the vessels ever went into the possession of the insurgents, and that by fraud. It may interest the Tribunal of Arbitration to learn, in a few words, the result of these contracts and the course pursued by the French Government.

The authorization which had been obtained for Mr. Arman and Mr. Vorus to arm the four vessels, under the contract of the 15th of April, and the doings of Mr. Arman under the contract of the 16th of July, were unknown to the minister of foreign affairs. When they were brought to Mr. Drouyn de Lhuys' attention by the minis-

Conduct of the French Government.

[268] ter of the United States at Paris, he took immediate *steps to prevent a violation of the neutrality of France. He wrote to Mr. Dayton, (October 22, 1863,) "Que M. le ministre de la marine vient de notifier à M. Vorus le retrait de l'autorisation qu'il avait obtenue pour l'armement de quatre navires en construction à Nantes et à Bordeaux. Il en a été donné également avis à M. Arman, dont l'attention a été en même temps apelée sur la responsabilité qu'il pourrait encourir par des actes en opposition avec la déclaration du 11 juin 1861."

Mr. Arman made many efforts to remove the injunctions of the Government, but without success. He was finally forced to sell to the Prussian Government two of the clippers constructed at Bordeaux under the contract of April 15. Two other clippers, constructed at Nantes under that contract, were sold to the Peruvian Government. Of the two ironclads constructed under the contract of July 16, one was sold to Prussia for 2,075,000 francs. A contract was made for the sale of the other to Denmark, which was then at war, and it was sent, under the Danish name of Stoerkodder, to Copenhagen. It arrived there after the time agreed upon for the delivery and after the war was over, and the Danish Government refused to accept it. The person in charge of the vessel in Copenhagen held at once the power of attorney of M. Arman and

[269] of Mr. Bul*lock; and in one capacity he delivered the vessel to himself in the other capacity, and took her to the Isle of Houat, off the French coast, where she was met by a steamer from England with an armament. Taking this on board, she crossed the Atlantic, stopping in Spain and Portugal on the way. In the port of Havana news was received of the suppression of the insurrection, and she was delivered to the authorities of the United States. The course pursued by France toward these vessels is in striking contrast with Great Britain's conduct in the cases of the Florida and the Alabama.

Contrast between the conduct of France and of Great Britain.

Bullock's operations in this way called for a great deal of money. On the 22d of May, 1863, a "navy warrant on Messrs. Fraser, Trenholm & Co. for £300,000" was sent to him.[2] On the 25th of June, 1863, "drafts for

[1] Mr. Moreau, counsel for the United States, in a suit pending before the cour d'appel de Paris, growing out of these transactions, so states: "Il nous reste maintenant à indiquer à la cour ce que fit M. Arman, c les navires qu'il construisait et des capitaux qu'il avait reçus de M. Bullock, capitaux o at le montant, suivant le dire de M. Arman lui-même, ne s'élève pas à moins de 5,280 00 francs."

[2] Bullock to Ellmore, July 3, 1863, Vol. VI, page 129.

£26,000 and £38,962 13*s.* 4*d.*, in favor of Commander James D. Bullock, on the C. S. Depositary in Liverpool, were forwarded to him."[1] Other funds were sent that the United States are not able to trace. In September, 1863, his contracts had been so heavy that he was low in funds. Mafflitt sent to him at Liverpool a number of "men, discharged from the Florida, with their accounts and discharges."[2] He could *not pay them, and the men "began to get restive." Mallory [270] made an effort to send him further funds, and asked Memminger to instruct "the Depositary at Liverpool" to countersign certain cotton certificates "on the application of Commander Bullock."[3] In this, or in some other way, the funds were replenished, and large sums were spent after that time.

While these extensive preparations for a fleet were going on in England and France, an event took place at the Cape of Good Hope which tested afresh the purpose of Her Majesty's Government to maintain British neutrality and enforce the Queen's Proclamation.

The Tuscaloosa at the Cape of Good Hope.

On the 5th of August, 1863, the Alabama arrived in Table Bay and gave information that the Tuscaloosa, a prize that had been captured off Brazil, would soon arrive in the character of a tender. On the 8th that vessel arrived in Simon's Bay, having her original cargo of wool on board. She lay in port about a week, and while there "overtures were made by some parties in Cape Town to purchase the cargo of wool."[4] The wool was disposed of to a Cape Town merchant, on condition that he should send it to Europe for sale, and two-thirds of the price should be paid into the insurgent treasury; and it was landed for that pur*pose by the Tuscaloosa, on a wild [171] spot, called Angra Pequena, outside of British jurisdiction.[5] When the Tuscaloosa made her appearance at Cape Town, Rear-Admiral Sir Baldwin Walker wrote to the Governor, desiring to know "whether this vessel ought still to be looked upon in the light of a prize, she never having been condemned in a prize court."[6] He was instructed to admit the vessel. The practical experience of the honest sailor rebelled at this decision, and he replied, "I apprehend that to bring a captured vessel under the denomination of a vessel of war, she must be fitted for warlike purposes, and not merely have a few men and a few small guns put on board her, (in fact nothing but a prize crew,) in order to disguise her real character as a prize. Now, this vessel has her original cargo of wool still on board, which cannot be required for warlike purposes, and her armament and number of her crew are quite insufficient for any services other than those of slight defense. Viewing all the circumstances of the case, they afford room for the supposition that the vessel is styled a tender, with the object of avoiding the prohibition against her entrance as a prize into our ports, where, if the captors wished, arrangements *could [272] be made for the disposal of her valuable cargo."[7]

She is released against the advice of Sir Baldwin Walker.

The Governor replied that the Attorney General was of opinion that "if the vessel received the two guns from the Alabama or other Confederate vessel of war, or if the person in command of her has a commission of war, * * * there will be a sufficient setting forth as a vessel of war to justify her being held to be

[1] Mallory to Elmore, June 25, 1863, Vol. VI, page 126.
[2] Mafflitt to Bullock, September 3, 1863, Vol. II, page 639.
[3] Mallory to Memminger, September 12, 1863, Vol. VI, page 132.
[4] Walker to the Secretary of the Admiralty, Vol. IV, page 216; Vol. VI, page 456.
[5] Mountague Bernard's Neutrality of Great Britain, &c., page 421, note 1.
[6] Vol. IV, page 217; Vol. VI, page 458.
[7] Walker to Wodehouse, Vol. IV, page 218; Vol. VI, page 459.

a ship of war."[1] The Admiral replied, tersely, "As there are two guns on board, and an officer of the Alabama in charge of her, the vessel appears to come within the meaning of the cases cited in your communication."[2] He did not seem to think it worth while to repeat his opinion as to the frivolous character of such evidence, since it had been disregarded by the civil authorities.

The course of the Governor disapproved.

The facts were in due course reported by the Governor to the Home Government at London,[3] and the Colonial Minister wrote back that Her Majesty's Government were of opinion that the "Tuscaloosa" did not lose the character of a prize captured by the Alabama merely because she was at the time of her being brought within British waters armed with two small rifle-guns, and manned
[273] * with a crew of ten men from the Alabama, and used as a tender to that vessel under the authority of Captain Semmes.[4] He said that he "considered that the mode of proceeding in such circumstances most consistent with Her Majesty's dignity, and most proper for the vindication of her territorial rights, would have been to prohibit the exercise of any further control over the Tuscaloosa by the captors, and to retain that vessel under Her Majesty's control and jurisdiction until properly reclaimed by her original owners." These instructions were looked upon by the Governor as a censure;[5] and the Tuscaloosa having in the mean time come again into port and placed herself within the jurisdiction, was seized, and the facts reported to London.[6] Her Majesty's Government disavowed this act, and instructed the Governor "to restore the Tuscaloosa to the lieutenant of the Confederate States who lately commanded her; or, if he should have left the Cape, then to retain her until she can be handed over to some person who may have authority from Captain Semmes, of the Alabama, or from the Government of the Confederate States,
[274] to receive her."[7] The *Governor was also informed that the Home Government had not in any degree censured him for the course which he had pursued.[8] The Duke of Newcastle placed his instructions to restore the vessel upon "the peculiar circumstances of this case." But the Tribunal of Arbitration will observe that, inasmuch as, notwithstanding his first decision of the 4th of November above cited, he did, in his second instructions, fully approve of the course of the Governor in receiving the vessel originally as a man-of-war, in violation of the Queen's Proclamation and of well-settled principles of International Law, and against the sensible and honest advice of Rear-Admiral Sir Baldwin Walker, he was in no position to shelter the British Government from responsibility for the hostile act of her officials, by pleading any special or peculiar circumstances.

The Tuscaloosa comes again into the waters of the colony.

The Governor reverses his policy and seizes the vessel.

His course is again disapproved.

It is necessary now to go back and bring up the history of army purchases and blockade-running. Walker and Porter were left established as agents at Bermuda, and Heyliger at Nassau.

Blockade-running.

On the 28th of March, 1863, Fraser, Trenholm & Co. were notified that the insurgent Secretary of the Treasury had "appointed Mr. Lewis

[1] Wodehouse to Walker, Vol. IV, page 219; Vol. VI, page 459.
[2] Walker to Wodehouse, Vol. IV, page 219; Vol. VI, page 460.
[3] Wodehouse to Duke of Newcastle, Vol. VI, page 220; Vol. IV, page 460.
[4] Bernard's Neutrality of Great Britain during the American Civil War, page 425. See also Vol. III, page 207, and Vol. VI, page 463.
[5] Wodehouse to Newcastle, Vol. IV, page 229; Vol. VI, page 465.
[6] Vol. IV, page 230.
[7] Duke of Newcastle to Sir P. Woodhouse, Vol. IV, page 241; Vol. VI, page 468.
[8] Same to same, March 10, Vol. IV, page 242; Vol. VI, page 469.

Heyliger a depositary of the treasury at Nassau, New Providence, and Colonel Norman S. Walker a de*positary at Bermuda;"[1] and they were told that Messrs. Heyliger and Walker would forward shipments of cotton on account of the treasury, and would draw on them for funds to pay expenses of the vessels and to make purchases of return cargoes. They were also informed that shipments of cotton would be made by way of Nassau and Bermuda by the authorities at Richmond, and they were directed to pay the proceeds of such shipments to Mr. Huse. The cotton was sent forward as opportunity offered. Thus, for instance, in May, 1863, the navy transported to Nassau five hundred and seventy-five bales for the treasury.[2] The shipments were, in fact, going whenever there was opportunity. [275]

Mr. J. M. Seixas was also appointed agent of the insurgent War Department in the ports of Wilmington and Charleston, "to take charge of all that relates to the *running of the steamers of the Department* sailing from and arriving at those ports."[3]

Cotton shipments.

On the 18th of April, 1863, Walker forwarded to Fraser, Trenholm & Co. 800 bales of cotton, drew against it for £20,000 for his own disbursements for commissary stores, and notified Huse that the balance would go to his credit with Fraser, Trenholm* & Co. He also reported the arrival at Bermuda of "Confederate steamers," blockade-runners, with cotton, and he called Huse's attention to "the importance of sending to this place (Bermuda) one or two cargoes of Duffryne coal *for the Government steamers;*" and adds: "You will readily see the injurious delay which may result from the want of a proper supply of coal." He also says: "*From all that I can learn, any Confederate man-of-war which may come to this port will have no difficulty in coaling and procuring supplies.*"[4] [276]

The blockade-runners of the Richmond authorities were by this time well known, and were making regular voyages. The Cornubia was running before January, 1863.[5] The Giraffe and the Cornubia ran regularly to Bermuda and to Nassau,[6] in February, 1863. One or two more were thought "highly desirable." In March there was "enough to employ three steamers for some time to come," and Huse was authorized "to add to the fleet two more good swift steamers,"[7], and was furnished with a credit of £200,000 on Fraser, Trenholm & Co.[8]

The insurgent government was all this while urg*ing its agents to dispatch arms and munitions of war. In April, 1863, twenty thousand Enfield rifle bayonets were wanted as soon as possible.[9] On the 6th of May "one hundred and fifty thousand bayonets" were wanted, "and lead and saltpeter in large quantities."[10]. On the 1st of June, Walker is ordered to send "paper for making catridges by the first boat;" "if there is none on hand send to Major Huse to buy a large quantity."[11] Two days later he was ordered to send "Colt's pistol-caps as soon as possible."[12] They were wanted for Lee, who was preparing to move toward Gettysburgh. [277]

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[1] Memminger to Fraser, Trenholm & Co., 28th March, 1863, Vol. VI, page 128.
[2] Memminger to Mallory, 6th May, 1863, Vol. VI, page 119.
[3] Seddon to Seixas, 7th April, 1863, Vol. VI, page 113.
[4] Walker to Huse, 18th April, 1862, Vol. VI, page 115.
[5] Gorgas to Huse, 1st January, 1863, Vol. VII, page 48.
[6] Same to same, 26th February, 1863, Vol. VII, page 48.
[7] Same to same, 8th March, Vol. VII, page 48.
[8] Same to same, 9th March, Vol. VII, page 49.
[9] Gorgas to Huse, Vol. VII, page 51.
[10] Same to same, 6th May, Vol. VII, page 51.
[11] Gorgas to Walker, Vol. VII, page 54.
[12] Same to same, Vol. VII, page 54.

Walker shows in all this emergency a fear of being crippled for want of coal. On the 21st of March he was arranging for a cargo in the port of Bermuda.[1] On the 29th of March he writes that he has purchased that cargo, and wants more.[2] On the 16th of May he urges Huse to send coal. "Every steamer takes from one hundred and sixty to one hundred and eighty tons." He has but six hundred tons left.[3] On the 23d of May he again calls attention "most earnestly to the
[278] *importance of keeping him supplied with good steam coal." He "hopes that some are already on the way." His "stock is almost exhausted."[4] On the 30th of June he cries "send us coal, coal, coal! Each steamer takes one hundred and eighty tons, so that six hundred tons will be quickly consumed."[5] Again on the 9th of July he writes "coal, coal, coal. Send me two thousand tons. The Lee, I fear, will be laid up for the want of it. You may calculate that each steamer will take one hundred and eighty tons."[6] He wrote also to Fraser, Trenholm & Co., to the same effect, saying that there should be a "reserve there of at least three or four thousand tons."[7] Shipments were made, and the supplies reached him before there was any serious detention of the blockade-runners. He was enabled to fulfill all the orders given in Richmond a short time before the advance of Lee's army into Pennsylvania.

In spite of the countenance given by the authorities in Bermuda and Nassau, funds could not be forwarded fast enough to Major Huse to meet the great demands made upon him at this time. On the 23d of July, 1863, "on behalf of the Con-
[279] federate Government," he made an arrangement with *the Mercantile Trading Company for an advance of £150,000, to be extended to £300,000, for the purchase of goods for the insurgents, and their shipment by the company, "via Bermuda, Nassau, or Havana;" "the Confederate Government to have two-thirds cargo space in each vessel, the company one-third each way;" "the cotton received from the Confederate States to be consigned to the company's agency in Liverpool."[8] Stringer, the managing director of the company, soon became doubtful of Huse's powers, and wrote Mr. Mason, saying that he had already advanced him £20,000 on saltpeter, and inquiring about the powers;[9] to which Mason replied that he did not know about the extent of Huse's powers, but that he had no doubt that the saltpeter would be taken by the insurgents.[10] Stringer's doubts were soon set at rest; for it would seem that about that time there must have been received in London an agreement without date, executed in Richmond by "J. Gorgas, Colonel, Chief of Ordnance," and "approved" by "J. A. Seddon, Secretary of War," which probably replaced the temporary agreement of July 23. Five steamers were to be put on to run from Bermuda or Nassau to Charleston or Wilmington, two-thirds to
[280] be owned by the insur*gents, and one-third by the British contractors. The insurgents were to pay for their two-thirds in cotton, at Charleston, and were to be allowed commissions for their part of

The insurgent Government interested in blockade-running.

[1] Walker to Huse, 21 March, Vol. VII, page 50.
[2] Same to same, Vol. VII, page 50.
[3] Same to same, 16th May, 1863, Vol. VII, page 52.
[4] Same to same, Vol. VII, page 53.
[5] Same to same, Vol. VII, page 55.
[6] Same to same, Vol. VII, page 56.
[7] Walker to Huse, Vol. VII, page 57.
[8] Memorandum made in London, 23d July, 1863, Vol. VI, page 136.
[9] Stringer to Mason, 16th September, 1863, Vol. VI, page 134.
[10] Mason to Stringer, 19th September, 1863, Vol. VI, page 138.

the work, the other contracting parties having a similar allowance. The portion of the proceeds of cotton belonging to the insurgents was "to be paid to the credit of the War Department with Messrs. Fraser, Trenholm & Co., of Liverpool." The insurgents were to furnish officers to command the vessels. The document was signed by "C. E. Thorburn," and by "Chas. H. Reid & Co.," and by "The Mercantile Trading Co., Limited; Edgar P. Stringer, Managing Director, London, 23d September, 1863."[1] Mr. Thorburn was a shareholder in the Trading Company,[2] and on the 3d of October Mr. Stringer is found corresponding with him about the purchase of these vessels.[3]

Meanwhile the operations of the insurgents at Nassau and Bermuda had gone on with even more vigor than during the previous year. Huse's credit had been strained to the utmost, but was now restored. The purchases and supplies for the Quartermaster's Department appear to have been transferred during this summer exclusively to Nassau. Seixas was instructed to place one thousand bales of cotton at Nassau for the Quar*termaster's Department, before the close of [281] the year, and was told that "the wants of the Quartermaster General are at Nassau, not Bermuda."[4]

Heyliger diligently complied with his instructions to forward quartermaster's stores. On the 29th of October he sent 40 tons by the "Antonica," "Margaret," and "Jessie." On the 2d of November he shipped by the "Hansa" 19 tons; the next day by the "Beauregard" 40 or 50 tons; and a large quantity by the "Alice;" and on the 5th of November he sent 20 tons by the "Banshee." The "Margaret" and the "Jessie" were captured; the others ran the blockade. The Quartermaster's Department was much employed in collecting and forwarding cotton to meet these purchases.[5]

Major Ferguson was in Liverpool at this time as an agent for the purchase of quartermaster's stores, and was sending large amounts forward. Fraser, Trenholm & Co. refused his drafts, because Heyliger had already overdrawn the Quartermaster's account.[6] Ferguson thereupon wrote, urging that cotton should be forwarded. "I have," he says, "more faith in cotton than I ever had. If we can but get that out, we can buy all England, for most *of the men, as well as [282] their merchandise, have a price."[7]

These facts brought to Earl Russell's notice.

On the 3d of November, 1863, Mr. Adams, laid before Earl Russell "new proofs of the manner in which the neutrality of Her Majesty's ports is abused by the insurgents in the United States, in order the more effectually to procrastinate their resistance," which he contended showed the "establishment in the port of St. George's, in the island of Bermuda, of a depot of naval stores for their use and benefit in the prosecution of the war."[8] This information should have put Lord Russell on the track of all the facts in regard to Bermuda. Had Her Majesty's Government pursued the investigations to which it gave them the clew, it would have done so. Earl Russell, on the 27th of November, answered that "Her Majesty's Government do not consider that they can properly interfere in this matter."[9] The dates would seem to indicate a possibility that no inquiries were made at Bermuda.

He sees no offense in them.

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[1] Vol. VI, page 140. [2] Vol. VI, page 144. [3] Vol. VI, page 143.
[4] Bayne to Seixas, September 29, 1863, Vol. VI, page 139.
[5] Bayle to Lawton, November 13, 1863, Vol. VI, page 147.
[6] Fraser, Trenholm & Co. to Lawton, November 26, 1863, Vol. VI, page 149.
[7] Furguson to Lawton, December 23, 1863, Vol. VI, page 149.
[8] Vol. I, page 735. [9] Vol. I, page 738.

On the 29th of December, 1863, Mr. Adams wrote Earl Russell that he had "information entitled to credit," that Ralph Cator, "an officer in Her Majesty's naval service," was "engaged in violating the
[283] blockade;" and that there was *"a strong disposition on the part of a portion of Her Majesty's navy to violate the neutrality of their Sovereign in aiding and assisting the enemies of the United States."[1] This, too, was answered in a week from its date, without taking the trouble to inquire in the West Indies.[2]

Again, upon the 25th day of January, 1864, Mr. Adams called attention to "the manner in which the insurgents habitually abuse the belligerent privileges which have been conceded to them by Great Britain." It would seem that he had lately had a conversation with Earl Russell on the subject, for he says that he "deems it almost superfluous to enlarge further on the difficulties which must grow out of a toleration of the outrageous abuses of the belligerent privileges that have been granted to the insurgents."[3] "It would be difficult," he adds, "to find an example in history of a more systematic and persistent effort to violate the neutral position of a country than this one has been from its commencement, that has not brought on a war. That this has been the object of the parties engaged in it I have never for a moment doubted." "It must be obvious," he says, "to your Lordship that, after such an exposition, all British subjects engaged in these violations of blockade
[284] must incur a suspicion *strong enough to make them liable to be treated as enemies, and, if taken, to be reckoned as prisoners of war."[4]

Earl Russell replied to this note on the 9th of March.[5] He ignored the evidence and charges of the hostile use of the British West India ports. He alluded to a charge against Lieutenant Rooke, which he set aside as unimportant, and to a charge against one James Ash of a purpose to build ships for the insurgents. As to the latter charge, he reiterated the oft-repeated plea that there was no "legal and proper evidence" to sustain it; and having disposed of these, he confined himself to a notice of Mr. Adams's intimation that it might become necessary to treat blockade-runners as prisoners of war. This, he said, could not be assented to.

Earl Russell's attention again called to these facts.

A short discussion ensued, which was closed by a note of Mr. Adams, transmitting further evidence of the character of the trade between the British West Indian ports and the insurgent States, and calling Earl Russell's "particular attention to the express condition exacted from all vessels in trade with the insurgent ports, that one-half of the tonnage of each vessel may be employed by the so-called Government for its
[285] own use, both on the *outward and homeward voyage;"[6] to which Earl Russell replied in an answer in which he said, in substance, that admitting all the facts stated to be true, there was nothing in them worthy of attention; for "the subjects of Her Majesty are entitled by International Law to carry on the operations of commerce equally with both belligerents, *subject to the capture of their vessels and to no other penalty.*"[7]

He again sees no offense in them.

This discussion closed the correspondence which took place between the two Governments on this branch of the subject. It left Great Britain justifying all that took place, after actual knowledge of much, and pos-

[1] Vol. I, page 739. [2] Vol. I, page 740. [3] Vol. I, page 746.
[4] Adams to Russell, Vol. I, page 745.
[5] Russell to Adams, Vol. I, pages 749–'51.
[6] Adams to Russell, Vol. I, page 756.
[7] Russell to Adams, Vol. I, page 757.

sible knowledge of all, had been brought within its reach. It left, too, the Queen's Proclamation as to this subject virtually revoked, and Her Majesty's subjects assured that it was no violation of international duty to break the blockade. It is worthy of remark that Lord Westbury, the Lord High Chancellor, gave a judicial decision to the same effect,[1] which was soon after followed by the High Court of Admiralty.[2] The executive and judicial branches of the British Government were thus a second time brought into *accord in construing away Her Ma- [286] jesty's Proclamation.

Blockade-running throve, and Nassau and Bermuda prospered under these repeated decisions of Her Majesty's Government. The Florida, too, arrived at Bermuda on the 16th of July, 1864, and remained there until the 27th, taking coal and supplies on board; and this at a time when like permission was refused to the vessels of the United States.

Blockade-running in partnership with the insurgent Government.

It was a favorite idea of the insurgent authorities from the beginning to become interested with Englishmen as partners in blockade-running. One contract to that effect has already been alluded to.

In July, 1864, McRae reported other contracts.[3] Captain Bullock, with whom (he said) I [McRae] am directed by the Secretary of the Treasury to consult," was a party to the transaction. These contracts "made provisions for fourteen steamers, four to leave during the month of August, eight in December, and two in April, 1865."[3] They were to be "built of steel, and to carry one thousand bales of cotton each, on a draught of seven feet water, and with an average speed of thirteen knots per hour."[3] Arrangements were at the same time made for the purchase of supplies for Huse and Ferguson pending the fin- *ishing of the vessels. The "Owl" was the first of these vessels [287] to arrive. The insurgent Navy Department claimed the right "to place a naval officer in charge of her in conformity with regulations."[4] The treasury doubted this, but Mallory insisted upon his right.[5] This drew from Bullock an indignant letter, complaining that the navy had taken these vessels. Good ships were building for the navy; why take these vessels, which were not suited for naval purposes.[6]

On the 5th of October, 1864, orders were given for more arms, and McRae was ordered to supply Huse with $50,000 for the purpose.[7] On the 26th of November, Ferguson reports his doings in the purchase of woolen goods, and gives the reason for "making Liverpool his headquarters."[8] As late as the 7th of January, 1865, McRae is ordered to pay to Bullock £105,000. The steamer "Laurel," the same which took the arms and men to the Shenandoah, was then in Wilmington. She was sent out with a cargo of cotton, with instructions to the officer in command to sell the steamer and the cotton, and to pay Bullock £12,000 out of the proceeds, putting the balance to the credit of the *treasury, with Fraser, Trenholm & Co.[9] No efforts seem to [288] have been spared to sustain the dying fortunes of the insurrection. The insurgents, at the last, fell into the unaccountable error of supposing that the British Government intended to interfere with their

[1] 11 Jurist N. S., 400.
[2] Law Reports Admiralty and Ecclesiastical Courts, Browning, Vol. I, page 1.
[3] McRae to Seddon, July 4, 1864, Vol. VI, page 163.
[4] Mallory to Trenholm, September 21, 1864, Vol. VI, page 171.
[5] Same to same, September 22, 1864, Vol. VI, page 172.
[6] Bullock to McRae, November 1, 1864, Vol. VI, page 173.
[7] Gorgas to Seddon, October 5, 1864, Vol. VI, page 172.
[8] Ferguson to Lawton, November 26, 1864, Vol. VI, page 175.
[9] Trenholm to Fraser, Trenholm & Co., December 24, 1864, Vol. VI, page 177.

blockade-running. They changed the apparent ownership of the Stag into the name of John Fraser & Co., lest it should be seized as "a transport owned by the Confederate States, engaged in the blockade."[1] It is needless to say that the precaution was not required. Evidence had over and over again been laid before Lord Russell that these blockade-runners were, in fact, transports of the insurgents, carrying their funds for Liverpool, and bringing back their arms and munitions of war, and that the operations of these vessels were brought clearly within the terms of the Foreign Enlistment Act; but he ever turned a deaf ear to the charges.

On the 15th of March, 1865, Mr. Adams complained of this matter for the last time. The United States steamer San Jacinto having been wrecked on the Bahamas, and her officers and crew having found shelter at Nassau, the "Honduras," also a man-of-war, was sent there for the purpose of paying in coin the claims for salvage. *The Consul asked permission for the "Honduras" to enter the port, which was refused, although the "Florida" had, less than six months before, remained eleven days at Bermuda, and taken on board a full supply of coal. In bringing this breach of hospitality to the notice of Earl Russell, Mr. Adams said: "I shall not seek to dwell on the painful impression this proceeding has made in the Naval Department of the United States, which at the same time had too much reason to be cognizant of the abuse made of that p t by persons practically engaged in hostilities in violation of Her Majesty's Proclamation. There was no single day during the month in which this incident happened that thirty-five vessels, engaged in breaking the blockade, were not to be seen flaunting their contraband flags in that port. Neither has its hospitality been restricted to that hybrid class of British ships running its illegal ventures on joint account with the insurgent authorities in the United States. The Chameleon, not inaptly named, but before known as the Tallahassee, and still earlier as a British steamer fitted out from London to play the part of a privateer out of Wilmington, was lying at that very time in Nassau, relieved indeed of her guns, but still retaining all the attributes of her hostile occupation. But a few days earlier the steamer Laurel, whose history *is already too well known to your Lordship, by my note of the 7th instant, had reappeared after its assumption of the name of the Confederate States, and had there been not only received, but commissioned with a post mail to a port of Her Majesty's Kingdom."[2] Lord Russell took no notice of Mr. Adams's charge, that many of these blockade-runners were, in fact, transports in the insurgent service, and that the ports of Nassau and Bermuda were depots of ordnance and quartermasters' stores. His only reply, made four days after the surrender of Lee at Appomattox, was a repetition of the old story, "there is nothing in the law of nations which forbids the attempt of neutral ship-owners or commanders to evade the blockade."[3] To the last the British Government refused to interfere. The fears which induced the insurgents to try to cover up the ownership of the "Stag" were groundless. The partnership continued until the United States interfered, and closed the business, before the English partners could deliver the last vessels under the contract.

Continued partiality.

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It is necessary to add a few words in regard to the closing operations of Bullock's department, before bringing this imperfect outline of Great Britain's violation of its duties as a neutral to a close.

[1] Trenholm to Mallory, December 17, 1864, Vol. VI, page 176.
[2] Adams to Russell, Vol. I, page 709.
[3] Russell to Adams, Vol. I, page 714.

*On the 30th of November, 1863, the London Times announced [291] that "the screw gun-vessel 'Victor,' recently purchased from the Admiralty, has, *as had been expected*, passed into the hands of the Confederate Government."[1] "The 'Victor,' an old dispatch-boat belonging to Her Majesty's Navy, was one of a number of ships ordered by the Admiralty to be sold as worn out and unserviceable. An offer for her was accepted on the 14th of September, 1863, and on the 10th of November the hull was delivered to the order of the purchasers, Messrs. Coleman & Co., the masts, sails, and rigging having been previously removed, as the pivots and other fittings for guns."[2] The steamer, instead of being taken away, remained at Sheerness, "refitting, under the direction of persons connected with the royal dock-yards."[3] Many facts came to the knowledge of Mr. Adams, indicating that the vessel was intended for the insurgents. In pursuing his inquiries, however, the suspicions of the parties concerned were probably excited; for the vessel, "by no means prepared for sea, and with no adequate force to man her," was carried with the workmen actually engaged upon her, across the English Channel and taken into Calais. Mr. Adams called Lord Russell's attention to these *proceedings,[4] [292] and furnished him with evidence tending to show the guilt of the purchasers, and also that one Rumble, inspector of machinery afloat of Her Majesty's dock-yard, Sheerness, had been the principal person concerned in enlisting the crew. Rumble was subsequently tried and acquitted, although the proof against him was clear. As to the vessel, any doubt of her character was at once removed. The insurgent flag was hoisted, and she went into commission under the name of the Rappahannock in crossing the Channel, and she entered the port of Calais claiming to be an insurgent man-of-war. What was done there is described in the statement of the Solicitor General to the jury on the trial of Rumble: "The preparations for equipping, which had been interrupted, were proceeded with; a number of boiler-makers were sent for from England, and many of them were induced to leave their employment in the dock-yard without leave, and when they returned they were discharged as being absent without leave; attempts were made to enlist more men; a large store of coals was taken in; but at this point the French Government stepped in. The French Government, not choosing their ports to be made the scene of hostile operations, interposed, and prevented any further equipment of the vessel, *and [293] by the short and summary process of mooring a man-of-war across her bows, prevented her going out of the port, and she has been kept a prisoner in the harbor ever since."[5] Contrast again the course of the French Government with that of the British Government in like cases. What vessel bearing a commission from the Richmond authorities was ever disturbed by a British gunboat, no matter how flagrant might have been her violations of British sovereignty?

The Rappahannock.

In the summer or autumn of the year 1864, there was in London a vessel called the Sea King. She was a merchant steamer which had belonged to a Bombay company, and had been employed in the East India trade.[6] On the 20th of September in that year she was sold in London to Richard Wright, of Liverpool,[7] the father-

The Shenandoah.

[1] Vol. II, page 725.
[2] Bernard's Neutrality of Great Britain, page 357.
[3] Mr. Adams to Mr. Seward, Vol. II, page 726.
[4] Vol. II, pages 727, 735, 738, 747, 751, 754, 771, 776, 787.
[5] Vol. IV, page 583.
[6] Bernard's British Neutrality, page 359.
[7] Vol. III, page 319.

in-law of Prioleau, of South Carolina, the managing partner in the Liverpool house of Fraser, Trenholm & Co.

On the 7th of October Wright gave a power of attorney to one Corbett, an Englishman, "to sell her at any time within six months for a sum not less than £45,000 sterling. On the next day she cleared for Bombay, and sailed with a large supply of coal and about fifty
[294] tons of metal and a *crew of forty-seven men."[1] Corbett sold her to the insurgents on the high-seas, or rather made the form of transfer comply with the facts of the original transaction which took place in England.[2] On the day after the Sea King left London, the Laurel, a screw-steamer, "nearly new built, very strong, and admirably adapted for a privateer,"[3] left Liverpool, clearing for Matamoras via Nassau. She took on board "a number of cases containing guns and carriages;" and she had "twenty-one seamen, six stewards, besides deck-hands and firemen,"[4] as first reported by the Consul at Liverpool. Further information after she left led him to write that she had taken "about one hundred men, forty or fifty of whom were on the pirate Alabama, and all Englishmen."[5] The two vessels met off Madeira. On the morning of the 18th of October they went together to the barren island of Porto Santo near Madeira, and there, with eighteen hours' work, transferred to the Sea King the arms and ammunition from the Laurel, "guns, gun-carriages, shot, shell, powder, clothing, goods, &c."[6] The insurgent commander of the Sea King and about forty men came out of the
[295] Laurel and took possession of *the vessel, and named her the Shenandoah; the insurgent flag was hoisted, the Laurel hoisted the English flag, and took on board some of the men of the Shenandoah, who could not be induced, even by "a bucketful of sovereigns," to aid in violating the Queen's Proclamation; and the two vessels separated.

The next appearance of the Shenandoah in a British port was at Melbourne in January, 1865. Her character and history were well known, and were at once brought to the notice of the Governor by the Consul of the United States.[7] The evidence was so clear that the authorities evidently felt they must go through the form of arresting and examining her. This was the shell conceded to the United States. The kernel was reserved for the insurgents. The vessel was discharged and allowed to make extensive repairs; to go upon a dry-dock; to take on board three hundred tons of coal, having at the time four hundred tons on board; and the authorities deliberately shut their eyes while she enlisted about fifty men.[8]

The Shenandoah, with its British crew, continued its career of destruction until long after the insurgents had abandoned the contest in
[296] America. It was not until the 19th of June, 1865, that Bul*lock, managing things to the last, issued his instructions to Captain Waddell to desist.[9] This communication the Foreign Office undertook to forward to him.[10] Captain Waddell arrived with his ship in the Mersey in November, 1865, and surrendered his ship to the British Government, by whom it was handed over to the United States.

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[1] Dudley to Seward, Vol. III, page 319.
[2] Wilson's affidavit, Vol. III, page 326.
[3] Dudley to Seward, Vol. III, page 316.
[4] Dudley to Adams, Vol. III, page 317.
[5] Dudley to Seward, Vol. III, page 318.
[6] Wilson's affidavit, Vol. III, page 325.
[7] Vol. III, pages 393, 394, 396, 398.
[8] Vol. III, pages 384–444.
[9] Bullock to Waddell, Vol. III, page 457.
[10] Hammond to Mark, Vol. III, page 459.

Mr. Mountague Bernard's list of vessels detained by Great Britain.

It is due to Great Britain to say that, in addition to the rams, some other vessels were detained by Her Majesty's Government. Mr. Mountague Bernard, one of Her Majesty's High Commissioners at Washington, in his able and courteous, but essentially British, "Historical Account of the Neutrality of Great Britain during the American Civil War,"[1] thus recapitulates the action of the British Government in the cases which have not been hitherto noticed in this paper. From his position, it may reasonably be assumed that the list is a complete one:

"November 18, 1862—The *Hector*. Mr. Adams's application referred to the Admiralty November 18. This was an inquiry whether the Hector was building for Her Majesty's Government. On reference to the Admiralty it was answered in the affirmative.—January 16, 1863—The *Georgiana*. Referred to Treasury and Home *Office [297] January 17. Ship said to be fitting at Liverpool for the Confederates. Mr. Adams could not divulge the authority on which this statement was made. Reports from the customs, sent to Mr. Adams on the 18th, 19th, and 27th of January, tended to show that she was not designed for war. She sailed on the 21st of January for Nassau, and on the 19th of March was wrecked in attempting to enter Charleston Harbor.—March 26, 1863—The *Phantom* and the *Southerner*. Referred to the Treasury and the Home Office March 27, to the Law Officers of the Crown June 2. The *Phantom* was fitting at Liverpool, the *Southerner* at Stockton-on-Tees. Both proved to be intended for blockade-runners. * * * *—March 18, 1864—The *Amphion*. Referred to Home Office March 18. This vessel was said to be equipped for the Confederate service. The Law Officers reported that no case was made out. She was eventually sent to Copenhagen for sale as a merchant-ship.—April 16, 1864—The *Hawk*. Referred to the Home Office, to the Lord Advocate, and the Treasury April 18. This case had been already (April 4) reported on by the customs, and the papers sent to the Lord Advocate. On the 13th of April the ship, which was suspected of having been built for the Confederates, left the Clyde without a register, and came to Greenhithe. The Law Officers *decided that there was no evi- [298] dence to warrant a seizure. She proved to be a blockade-runner. * * * —January 30, 1865—The *Virginia* and the *Louisa Ann Fanny*. Referred to Treasury February 1. Vessels said to be in course of equipment at London. No case was established, and they proved to be blockade-runners, as reported by the Governor of the Bahamas, who had been instructed to watch their proceedings.—February 7, 1865—The *Hercules* and *Ajax*. Referred to Treasury and Home Office February 8 and 9. Both vessels built in the Clyde. The *Ajax* first proceeded to Ireland, and was detained at Queenstown by the mutiny of some of the crew, who declared she was for the Confederate service. She was accordingly searched, but proved to be only fitted as a merchant-ship. The Governor of the Bahamas was instructed to watch her at Nassau. On her arrival there she was again overhauled, but nothing suspicious discovered, and the Governor reported that she was adapted, and he believed intended, for a tug-boat. The *Hercules* being still in the Clyde, inquiries were made by the customs officers there, who reported that she was undoubtedly a tug-boat, and the sister ship to the *Ajax*."

This is the whole catalogue of good works, additional to those already alluded to, which the accomplished advocate of Great Britain is able to put in *as an offset to the simple story of injuries which [299] has been told in this paper. Comment upon it is unnecessary.

[1] Bernard's Neutrality, page 352.

The United States have now completed what they have to say in this connection of the conduct of Great Britain during the insurrection. Some of the narrative may, in its perusal, appear minute, and to refer to transactions which will be claimed on the part of Great Britain to have been conducted in conformity with some construction of alleged International Law. These transactions are, however, historically narrated; and even those which come nearest to a justification, as within some precedent, or some claim of neutral right, exhibit a disinclination to investigate, not to say a foregone conclusion of adverse decision. British municipal statute rather than recognized International Law was the standard of neutral duty; and the rigid rules of evidence of the English Common Law were applied to the complaints made in behalf of the United States, in striking contrast to the friendliness of construction, the alacrity of decision, and the ease of proof in the interests of the insurgents.

Before proceeding to relate in detail the acts of the several cruisers, which will constitute specific claims against Great Britain, the United States ask the Tribunal to pause to see what has been already established.

[300] *In a dispatch from Mr. Fish to Mr. Motley, on the 25th of September, 1869, in which the Government of the United States, for the last time, recited diplomatically its grievances against Great Britain, certain statements were made which were esteemed to be of sufficient importance to be transferred to Mr. Mountague Bernard's book. Mr. Bernard was pleased to say of these statements, that a "rhetorical color, to use an inoffensive phrase, [was] thrown over the foregoing train of assertions, which purport to be statements of fact." The United States now repeat those statements which Her Majesty's High Commissioner did them the honor to incorporate into his able work, and to comment upon, and they confidently insist that every statement therein contained has been more than made good by the evidence referred to in this paper. Those statements were as follows,[1] the references to the proof being inserted for the convenience of the Tribunal:

The charges in Mr. Fish's instruction of September 25, 1869, sustained by this evidence.

"As time went on; as the insurrection from political came at length to be military; as the sectional controversy in the United States proceeded to exhibit itself in the organization of great armies and fleets, and in the prosecution of hostilities on a scale of gigantic magnitude, then it was that the spirit of the Queen's Proclamation showed

[301] itself in *the event, seeing that in virtue of the Proclamation maritime enterprises in the ports of Great Britain, which would otherwise have been piratical, were rendered lawful, [*see Lord Campbell's speech in the House of Lords, May* 16, 1861; *cited ante, page* 14,] and thus Great Britain became, and to the end continued to be, the arsenal, [*see Huse and Ferguson's letters and Gorgas's report of Huse's purchases,*] the navy-yard, [*see the foregoing account of Bullock's doings,*] and the Treasury, [*see the foregoing evidence as to Fraser, Trenholm & Co.'s acts as depositaries,*] of the insurgent Confederates.

"A spectacle was thus presented without precedent or parallel in the history of civilized nations. Great Britain, although the professed friend of the United States, yet, in time of avowed international peace, permitted [*see the decision in the Alexandra case; also the refusals to proceed against the Florida, Alabama, and the rams*] armed cruisers to be fitted out and harbored and equipped in her ports to cruise against the

[1] Bernard's Neutrality of Great Britain, 378-380.

merchant-ships of the United States, and to burn and destroy them until our maritime commerce was swept from the ocean. [*See Mr. Cobden's speech in the House of Commons, May* 13, 1864.] Our merchant-vessels were destroyed piratically by captors who had no ports of their own [*see Earl Russell's speech in the House of Lords, April* 26, 1864] in which to refit *or to condemn prizes, and whose only [302] nationality was the quarter-deck of their ships, built, dispatched to sea, and, not seldom in name, still professedly owned in Great Britain. [*See the evidence in regard to the transfers of the Georgia, and of the Shenandoah.*]

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"The Queen's Ministers excused themselves by alleged defects in the municipal law of the country. [*See Earl Russell's constant pleas of want of sufficient proof to convict criminals*] Learned counsel either advised that the wrongs committed did not constitute violations of the municipal law, or else gave sanction to artful devices of deceit to cover up such violations of law. [*See the decision as to the Florida; as to the Alabama until she was ready to sail; as to the rams; and as to the operations at Nassau, Bermuda, and Liverpool.*] And, strange to say, the courts of England or of Scotland, up to the very highest, were occupied month after month with juridical niceties and technicalities of statute construction in this respect, [*see the Alexandra case,*] while the Queen's Government itself, including the omnipotent Parliament, which might have settled these questions in an hour by appropriate legislation, sat with folded arms, as if unmindful of its international obligations, and suffered ship after ship to be constructed *in its ports to wage [303] war on the United States. [*See the decision of the Cabinet, communicated to Mr. Adams, February* 13, 1863, *and Lord Palmerston's speech in the House of Commons, March* 27, 1863.]

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"When the defects of the existing laws of Parliament had become apparent, the Government of the United States earnestly entreated the Queen's Ministers to provide the required remedy, as it would have been easy to do, by a proper act of Parliament; but this the Queen's Government refused. [*See the account of Lord Russell's interview with Mr. Adams, February* 13, 1863.]

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"On the present occasion, the Queen's Ministers seem to have committed the error of assuming that they needed not to look beyond their own local law, enacted for their own domestic convenience, and might, under cover of the deficiencies of that law, disregard their sovereign duties toward another Sovereign Power. Nor was it, in our judgment, any adequate excuse for the Queen's Ministers to profess extreme tenderness of private rights, or apprehension of actions for damages, in case of any attempt to arrest the many ships which, either in England or Scotland, were, with ostentatious publicity, being constructed to cruise *against the United States. [*See the evidence as to the* [304] *Florida, the Georgia, the Alabama, the rams, the Bermuda, the Tallahassee, the Pampero, the Rappahannock, the Laurel, and other vessels.*]

* * * * * * *

"But although such acts of violation of law were frequent in Great Britain, and susceptible of complete technical proof, notorious, flaunted directly in the face of the world, varnished over, if at all, with the shallowest pretexts of deception, yet no efficient step appears to have been taken by the British Government to enforce the execution of its municipal laws or to vindicate the majesty of its outraged sovereign power.

[*The Alabama, the Florida, the Georgia, and the Shenandoah escaped. The rams were seized, but never condemned; no guilty party was ever punished; Bullock and Prioleau were never interfered with.*]

"And the Government of the United States cannot believe—it would conceive itself wanting in respect for Great Britain to impute—that the Queen's Ministers are so much hampered by juridical difficulties that the local administration is thus reduced to such a state of legal impotency as to deprive the Government of capacity to uphold its sovereignty against local wrong-doers, or its neutrality as regards other Sovereign Powers. [*Contrast with this the course of the British Gov-*
[305] **ernment and Parliament during the Franco-German war.*]

"If, indeed, it were so, the causes of reclamation on the part of the United States would only be the more positive and sure, for the law of nations assumes that each Government is capable of discharging its international obligations; and, perchance, if it be not, then the absence of such capability is itself a specific ground of responsibility for consequences. [*This statement probably will not be denied.*]

"But the Queen's Government would not be content to admit, nor will the Government of the United States presume to impute to it, such political organization of the British Empire as to imply any want of legal ability on its part to discharge, in the amplest manner, all its duties of sovereignty and amity toward other Powers.

"It remains only in this relation to refer to one other point, namely, the question of *negligence;* neglect on the part of officers of the British Government, whether superior or subordinate, to detain Confederate cruisers, and especially the Alabama, the most successful of the depredators on the commerce of the United States.

"On this point the President conceives that little needs now to be said, for various cogent reasons:

[306] * "First, the matter has been exhaustively discussed already by this Department, or by the successive American Ministers.

"Then, if the question of negligence be discussed with frankness, it must be treated in this instance as a case of extreme negligence, which Sir William Jones has taught us to regard as equivalent or approximate to evil intention. The question of negligence, therefore, cannot be presented without danger of thought or language disrespectful toward the Queen's Ministers; and the President, while purposing, of course, as his sense of duty requires, to sustain the rights of the United States in all their utmost amplitude, yet intends to speak and act in relation to Great Britain in the same spirit of international respect which he expects of her in relation to the United States, and he is sincerely desirous that all discussions between the Governments may be so conducted as not only to prevent any aggravation of existing differences, but to tend to such reasonable and amicable determination as best becomes two great nations of common origin and conscious dignity and strength.

"I assume, therefore, pretermitting detailed discussion in this respect, that the negligence of the officers of the British Government in
[307] the matter of the Alabama, at least, was gross and inex*cusable, and such as indisputably to devolve on that Government full responsibility for all the depredations committed by her. Indeed, this conclusion seems in effect to be conceded in Great Britain. [*See the preface to Earl Russell's Speeches and Dispatches.*] At all events, the United States conceive that the proofs of responsible negligence in this matter are so clear that no room remains for debate on that point, and it should be taken for granted in all future negotiations with Great Britain."

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*PART V.

WHEREIN GREAT BRITAIN FAILED TO PERFORM ITS DUTIES AS A NEUTRAL.—THE INSURGENT CRUISERS.

"In the first place, I am sorry to observe that the unwarrantable practice of building ships in this country, to be used as vessels of war against a State with which Her Majesty is at peace, still continues. Her Majesty's Government had hoped that this attempt to make the territorial waters of Great Britain the place of preparation for warlike armaments against the United States might be put an end to by prosecutions and by seizure of the vessels built in pursuance of contracts made with the Confederate agents. But facts which are unhappily too notorious, and correspondence which has been put into the hands of Her Majesty's Government by the Minister of the Government of the United States, show that resort is had to evasion and subtlety in order to escape the penalties of the law; that a vessel is bought in one place, that her armament is prepared in another, and that both are sent to some distant port beyond Her Majesty's jurisdiction, and that thus an armed steamship is fitted out to cruise against the commerce of a Power in amity with Her Majesty. A crew, composed partly of British subjects, is procured separately; wages are paid to them for an unknown service. They are dispatched, perhaps, to the coast of France, and there, or elsewhere, are engaged to serve in a Confederate man-of-war.

"Now, it is very possible that by such shifts and stratagems, the penalties of the existing law of this country, nay, of any law that could be enacted, may be evaded; but the offense thus offered to Her Majesty's authority and dignity by the *de facto* rulers of the Confederate States, whom Her Majesty acknowledges as belligerents, and whose agents in the United Kingdom enjoy the benefit of our hospitality in quiet security, remains the same. It is a proceeding totally unjustifiable, and manifestly offensive to the British Crown."—*Earl Russell's Letter to Messrs. Mason, Slidell, and Mann, February* 13, 1865. *Vol. I, page* 630.

The Tribunal of Arbitration will probably agree with Earl Rus-
[310] sell in his statement to the insur*gent agents, that "the practice of building ships" in Great Britain "to be used as vessels of war" against the United States, and the "attempts to make the territorial waters of Great Britain the place of preparation for warlike armaments against the United States" "in pursuance of contracts made with the Confederate agents," were "unwarrantable" and "totally unjustifiable."

Earl Russell denounces the acts of which the United States complain as unwarranted and totally unjustifiable.

British territory was, during the whole struggle, the base of the naval operations of the insurgents. The first serious fight had scarcely taken place before the contracts were made in Great Britain for the Alabama and the Florida. The contest was nearly over when Waddell received his orders in Liverpool to sail thence in the Laurel in order to take command of the Shenandoah and to visit the Arctic Ocean on a hostile cruise.[1]

British territory the base of the naval operations of the insurgents.

There also was the arsenal of the insurgents, from whence they drew their munitions of war, their arms, and their supplies. It is true that it has been said, and may again be said, that it was no infraction of the law of nations to furnish such supplies. But, while it is not maintained that belligerents may infringe upon the rights which neutrals have to manufacture and deal in such military supplies in the ordinary course of commerce, it is asserted with confidence
[311] that a neutral *ought not to permit a belligerent to use the neutral soil as the main if not the only base of its military supplies, during a long and bloody contest, as the soil of Great Britain was used by the insurgents.

Their arsenal.

[1] Vol. III, page 461.

It may not always be easy to determine what is and what is not lawful commerce in arms and munitions of war; but the United States conceive that there can be no doubt on which side of the line to place the insurgent operations on British territory. If Huse had been removed from Liverpool, Heyliger from Nassau, and Walker from Bermuda; or if Fraser, Trenholm & Co. had ceased to sell insurgent cotton and to convert it into money for the use of Huse, Heyliger, and Walker, the armies of the insurgents must have succumbed. The systematic operations of these persons, carried on openly and under the avowed protection of the British Government, made of British territory the "arsenal" of which Mr. Fish complained in his note of September 25, 1869.[1] Such conduct was, to say the least, wanting in the essentials of good neighborhood and should be frowned upon by all who desire to so establish the principles of International Law, as to secure the peace of the world, while protecting the independence of nations.

The systematic operations of the insurgents a violation of the duties of a neutral.

It is in vain to say that both parties could have *done the same [312] thing. The United States were under no such necessity. If they could not manufacture at home all the supplies they needed, they were enabled to make their purchases abroad openly, and to transport them in the ordinary course of commerce. It was the insurgents who, unable to manufacture at home, were driven to England for their entire military supplies, and who, finding it impossible to transport those supplies in the ordinary course of commerce, originated a commerce for the purpose, and covered it under the British flag to Bermuda and Nassau. Under the pressure of the naval power of the United States, their necessities compelled them to transport to England a part of the executive of their Government, and to carry on its operation in Great Britain. They were protected in doing this by Her Majesty's Government, although its attention was called to the injustice thereof.[2] This conduct deprived the United States of the benefit of their superiority at sea, and to that extent British neutrality was partial and insincere. The United States confidently submit to the Tribunal of Arbitration that it is an abuse of a sound principle to extend to such combined transactions as those of Huse, Heyliger, Walker, and Fraser, Trenholm & Co., the well-settled right of a neutral to manufacture and *sell [313] to either belligerent, during a war, arms, munitions, and military supplies. To sanction such an extension will be to lay the foundation for international misunderstanding and probable war, whenever a weaker party hereafter may draw upon the resources of a strong neutral, in its efforts to make its strength equal to that of its antagonist.

From the Queen's Proclamation of neutrality to the close of the struggle, Great Britain framed its rules, construed its laws and its instructions, and governed its conduct in the interest of the insurgents. What could tend more to inspirit them than the news that on the eve of Mr. Adams's arrival in London, as if to show in the most public manner a purpose to overlook him, and to disregard the views which he might have been instructed by his Government to present, it had been determined to recognize their right to display on the ocean a flag which had not then a ship to carry it? How they must have welcomed the parliamentary news,[3] on the heels of this proclamation, that the effect of this recognition would be to employ British subjects in warring upon the commerce of the United

Continuing partiality for the insurgents.

[1] Vol. VI, page. 4.
[2] Lord Russell to Mr. Adams, Vol. I, page 578.
[3] Vol. V, pages 486 to 91.

States, with a protection against piracy promised in advance! How great must have been their joy, when they found British laws construed so as to confer upon them the right to use the workshops
[314] *anddock-yards of Liverpool, for building ships which, without violating the municipal law of England, might leave British ports in such warlike state that they could be fitted for battle in twenty-four hours! How they must have been cheered by the official legalization of the operations of those who had been sent to Liverpool in anticipation of the proclamation, to be in readiness to act! And if these welcome sights inspirited and cheered the insurgents, as was doubtless the case, how relatively depressing must have been their effect upon the loyal people and upon the Government of the United States! The correspondence of Mr. Seward and of Mr. Adams, running through the whole of the volumes of evidence accompanying this case, bears testimony to the depth of this feeling.

When Great Britain carried into practice its theory of neutrality, it was equally insincere and partial.

Recapitulation of hostile acts tolerated in British possessions.

Its municipal laws for enforcing its obligations as a neutral, under the law of nations, were confessedly inadequate, and, during the struggle, were stripped of all their force by executive and judicial construction. Yet Great Britain refused to take any steps for their amendment, although requested so to do.[1]

[315] The Queen's Proclamation inhibited blockade-*running; yet the authorities encouraged it by enacting new laws or making new regulations which permitted the transshipment of goods contraband of war within the colonial ports; by officially informing the colonial officers that "British authorities ought not to take any steps adverse to merchant-vessels of the Confederate States, or to interfere with their free resort to British ports;"[2] by giving official notice to the United States that it would not do to examine too closely, on the high seas, British vessels with contraband of war;[3] and by regulations which operated to deter the United States vessels of war from entering the British ports from which the illicit trade was carried on.

The Foreign Enlistment Act of 1819 forbade the employment of a British vessel as a transport; and yet vessels known to be owned by the insurgent authorities, and engaged in carrying munitions of war for them, were allowed to carry the British flag and were welcomed in British ports. Still further, the same vessel would appear one day as a blockade-runner, and another day as a man-of-war, receiving an equal welcome in each capacity.

The instructions of January 31, 1862, forbade both belligerents alike to enter the port of Nassau except by permission of the governor,
[316] or in stress of weather. That permission was lavishly given to every insurgent cruiser, but was granted churlishly, if at all, to the vessels of the United States.

The same instructions forbade the granting to a steam man-of-war of either belligerent in British ports a supply of coal in excess of what would be necessary to take the vessel to the nearest port of its own country or some nearer destination. This rule was enforced upon the vessels of the United States, but was utterly disregarded as to the vessels of the insurgents.

Those instructions also forbade the granting of any supply of coal to such a vessel if it had been coaled in a British port within three months.

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[1] Ante, page 251.
[2] Duke of Newcastle to Governor Ord, Vol. II, page 558.
[3] Earl Russell to Lord Lyons, Vol. II, page 591.

Yet in three notable instances this salutary rule was violated, that of the Nashville, at Bermuda, in February, 1862; the Florida, at Barbadoes, in February, 1863; and the Alabama, at Capetown, in March, 1864.

These facts throw suspicion upon the acts of British officials toward insurgent cruisers.

These admitted facts were repeatedly, and in detail, brought to the notice of the British Government, and as repeatedly the answer was given that there was no cause for interference. At length they were, as a system, brought to Lord Russell's attention, by Mr. Adams, with the threads of evidence, which furnished him with the proof of their truth. Yet he declined to act, saying that "this correspondence does not appear *to Her Majesty's Government to contain any sufficient evidence [317] of a system of action in direct hostility to the United States;" that it furnished no proof as to the building of iron-clads that "could form matter for a criminal prosecution;" and that the other acts complained of were "not contrary to law."[1] In other words, he declared that the only international offense of which Her Majesty's Government would take notice was the building of iron-clads; and that no steps would be taken, even against persons guilty of that violation of neutrality, until the officials of the United States would act the part of detectives, and secure the proof which a British court could hold competent to convict the offender of a violation of a local law. It is important, in considering the evidence which is about to be referred to, to bear in mind these constant demonstrations of partiality for the insurgents. They show a persistent absence of real neutrality, which, to say the least, should throw suspicion upon the acts of the British officials as to those vessels, and should incline the Tribunal to closely scrutinize their conduct.

They show an abnegation of all diligence to prevent the acts complained of.

The United States, however, go further than this. They insist that Her Majesty's Government abandoned, in advance, the exercise of that due *diligence which the Treaty [318] of Washington declares that a neutral is bound to observe. They say that the position of Her Majesty's Government just cited, taken in connection with the construction put upon the Foreign Enlistment Act by the British courts in the Alexandra case, was a practical abandonment of all obligation to observe diligence in preventing the use of British territory by the insurgents, for purposes hostile to the United States. They aver that it was a notice to them that no complaints in this respect would be listened to, which were not accompanied by proof sufficient to convict the offender as a criminal under the Foreign Enlistment Act. To furnish such proof was simply impossible. The Tribunal will remember that it was judicially said in the case of the Alexandra, that what had been done in the matter of the Alabama was no violation of British law, and therefore constituted no offense to be punished. Well might Earl Russell say that the Oreto and the Alabama were a scandal to English laws.

They throw upon Great Britain the burden of proof to show that the acts complained of could not have been prevented.

The United States with great confidence assert that the facts which have been established justify them in asking the Tribunal of Arbitration, in the investigations now about to be made, to assume that in the violations of neutrality which will be shown to have taken place, the burden of proof *will be upon Great Britain to establish that [319] they could not have been prevented. Her Majesty's Government declined to investigate charges and to examine evidence submitted by Mr. Adams, as to repeated violations of British territory, which subsequent events show were true in every respect. It placed its refusal

[1] Earl Russell to Mr. Adams, Vol. I, page 578.

upon principles which must inevitably lead to like disregard in future—principles which rendered nugatory thereafter any measure of diligence to discover violations of neutrality within Her Majesty's dominions. Thereby Great Britain assumed and justified all similar acts which had been or might be committed, and relieved the United States from the necessity of showing that due diligence was not exercised to prevent them.

Of what use was it to exercise diligence to show the purpose for which the Florida, the Alabama, or the Georgia was constructed, or the Shenandoah was purchased, if the constructing, fitting out, or equipping, or the purchase for such objects was lawful, and could not be interfered with? What diligence could have prevented the excessive supplies of coal and other hospitalities to the insurgent cruisers, or the protection of transports, all of which made these ports bases of operations, if such acts were no violation of the duties of a neutral, of which the United States might justly complain?

[320] *The cruisers for whose acts the United States ask this Tribunal to hold Great Britain responsible are (stating them in the order in which their cruises began) the Sumter; the Nashville; the Florida and her tenders, the Clarence, the Tacony, and the Archer; the Alabama and her tender, the Tuscaloosa; the Retribution; the Georgia; the Tallahassee; the Chickamauga; and the Shenandoah. The attention of the Tribunal of Arbitration is now invited to an account of each of these vessels. List of the insurgent cruisers.

THE SUMTER.

The Sumter escaped from the passes of the Mississippi on the 30th of June, 1861, and on the 30th of the following July arrived at the British port of Trinidad. She remained there six days, taking in a supply of coal.[1] Complaint being made of this act as a "violation of Her Majesty's Proclamation of Neutrality,"[2] Lord Russell replied, that "the conduct of the Governor was in conformity to Her Majesty's Proclamation;" that "Captain Hillyar, of Her Majesty's Ship Cadmus, having sent a boat to ascertain her nationality, the commanding officer showed a commission signed by Mr. Jefferson Davis, calling himself the Presi*dent of the so-styled Confederate States."[3] Her Majesty's Government thus held this vessel to be a man-of-war as early as the 30th of July, 1861. The Sumter.

[321]

Having got a full supply of coal and other necessary outfit, the Sumter sailed on the 5th of August, 1861, and, after a cruise in which she destroyed six vessels carrying the flag of the United States, she arrived in Gibraltar on the 18th of the following January. Before she could again be supplied with coal and leave that port, she was shut in by the arrival of the Tuscarora, a vessel of war of the United States, which "anchored off Algeciras."[4] The Tuscarora was soon followed by the Kearsarge, both under the instructions of the Government of the United States.

Finding it impossible to escape, an attempt was made to sell the Sumter, with her armament, for £4,000.[5] The consul of the United

[1] Bernard to Seward, Vol. II, page 485.
[2] Adams to Russell, Vol. II, page 484.
[3] Russell to Adams, Vol. II, page 486.
[4] Sprague to Seward, Vol. II, page 502.
[5] Sprague to Adams, Vol. II, page 507.

States at Gibraltar, by direction of Mr. Adams, protested against this sale.[1] The sale was finally made "by public auction" on the 19th of December, 1862.[2] Mr. Adams notified Earl Russell that the sale would not be recognized by the United States, and called upon Great Britain not to regard it, as it had been made in violation of principles of law that had been *adopted by British courts and publicists.[3] He [322] maintained that "Her Majesty's Government, in furnishing shelter for so long a period to the Sumter in the harbor of Gibraltar, as a ship of war of a belligerent, had determined the character of the vessel;"[4] and that "the purchase of ships of war belonging to enemies is held in the British courts to be invalid."[5]

After reflecting upon this simple proposition for more than five weeks, Earl Russell denied it. He said, "The British Government, when neutral, is not bound to refuse to a British subject the right to acquire by purchase a vessel which a belligerent owner may desire to part with, but it would not deny the right of the adverse belligerent to ascertain, if such vessel were captured by its cruisers, whether the vessel had rightfully, according to the law of nations, come into the possession of the neutral."[6] Mr. Adams also maintained that the sale was fictitious,[7] to which Earl Russell replied that he "could not assume that the Sumter had not been legally and *bona fide* sold to a British owner for commercial and peaceful purposes."[8] Mr. Adams insisted (and the result proved that he *was correct) that the sale of the Sumter was [323] fictitious, and that the purchaser was an agent of Fraser, Trenholm & Co., the treasury agents and depositaries, &c., for the insurgent authorities at Richmond.[9] His representations were disregarded, and the vessel was taken to Liverpool and thoroughly repaired. She then took on board a cargo of arms and munitions of war, and, under the the name of the Gibraltar, fortified with a British register, became an insurgent transport.[10]

In all these proceedings on the part of British officials the United States find a partiality toward the insurgents, which is inconsistent with the duties of a neutral:

1. The Sumter was permitted to receive at Trinidad a full supply of coal. The United States, however, were forbidden by Great Britain even to deposit coal in the British West Indies for their own use, under such regulations as might be prescribed by Her Majesty's Government. What took place at Nassau in December, 1861, has already been told. In Bermuda, on the 19th of February, 1862, their consul was officially informed that "the Government of Her Britannic Majesty *had determined not to allow the formation in any British colony [324] of a coal-depot for the use of their vessels of war, either by the Government of the United States or of the so-styled Confederate States."[11]

[1] Sprague to Codrington, Vol. II, page 509.
[2] Sprague to Adams, Vol. II, page 515.
[3] Adams to Russell, Vol. II, page 522.
[4] Adams to Russell, Vol. II, page 523.
[5] Adams to Russell, Vol. II, page 522.
[6] Russell to Adams, Vol. II, page 526.
[7] Adams to Russell, Vol. II, page 520.
[8] Russell to Adams, Vol. II, page 521.
[9] The nominal purchasers were M. G. Klingerder & Co., (Vol. II, page 529.) This house was connected with Fraser, Trenholm & Co., and paid regularly a portion of the wages of the men on the Alabama to their families in Liverpool. (See Dudley to Adams, Vol. III, page 210.)
[10] Vol. II, pages 521-538.
[11] Ord to Allen, Vol. II, page 590. See also the reports of the officers of the Keystone and the Quaker City, who, in December, 1861, were refused supplies of coal at this port. Vol. VI, pages 52 and 53. See also the case of the Florida, *post*, where this subject is more fully discussed.

Before this Case is finished it will be seen how thoroughly this determination was disregarded as to the "so-styled Confederate States."

If it should be thought that the habitually insincere neutrality of Great Britain, as already detailed, did not constitute such a violation of the duties of a neutral as would entail responsibility for the acts of all the insurgent cruisers, (which the United States, with confidence, maintain that it did,) it is clear that the Sumter was furnished with an excessive supply of coal at Trinidad, which supply enabled her to inflict the subsequent injuries on the commerce of the United States. It is not contended that at that time there were any precedents which settled absolutely the quantity of coal which might be furnished to a belligerent steam man-of-war by a neutral. When the proclamation of neutrality was issued, it seemed to be the opinion of leading members of the House of Lords, (Lords Brougham and Kingsdown, for [325] instance,) that coal for the use of vessels of war *might be regarded as contraband of war.[1] The instructions issued by Her Majesty's Government a few months later permitted this article to be furnished, provided the supply should be measured by the capacity of the vessel to consume it, and should be limited to what might be necessary to take it to the nearest port of its own country, or to some nearer destination. This rule, as subsequently modified by the United States,[2] appears to be a just medium between the excessive supply furnished to the Sumter in Trinidad and the absolute refusal to permit the United States to supply itself. Under this rule the Sumter would have been entitled to receive only what would be necessary to take her to New Orleans or to Galveston.

2. The Sumter was in the port of Gibraltar when the instructions of January 16, 1862, (Vol. IV, p. 175,) were published there,[3] on the 11th February. By their terms they were to go into effect six days after that date. Under those instructions the Sumter, having been rec- [326] ognized as a man-of-war, ought to have been required to *leave the port of Gibraltar within twenty-four hours, or, if without coal, within twenty-four hours after getting a supply of coal. Instead of that she was allowed to remain there for twelve months, while Lord Russell's instructions were rigidly enforced against the vessels of the United States. The reason for this partiality may be easily gathered from the correspondence of the United States Consul at Gibraltar.[4] The vessels of war of the United States were on her track, and had the instructions of Earl Russell been complied with, the well-laid schemes of the United States officers for her destruction would have been successful. But the Tribunal will observe that the instructions, which were so offensively enforced against the United States vessels Connecticut and Honduras, were ignored as to the insurgent vessel Sumter.

3. The sale of the Sumter was palpably an evasion. She went into the hands of Fraser, Trenholm & Co.; and, knowing the connection between that firm and the insurgents, it is not too much to ask the Tribunal to assume as a probability that there was never any change of ownership. But if it should be thought that the transaction was made *bona fide*, then there is an equal probability that the money found its

[1] Vol. IV, pp. 486–491.

[2] The President's Proclamation of October 8, 1870, issued during the Franco-German war, limited the supply of coal to the war vessels or privateers of the belligerents to so much as might be sufficient, if without sail-power, to carry the vessel to the nearest European port of its own country; if with sail-power, to half that quantity.

[3] Vol. II, pages 502, 503.

[4] Sprague to Adams, Vol. II, pages 502, 503, 506, 507.

way to the *credit of the insurgents in their Liverpool transactions. [327]

By reason of these repeated acts of insincere neutrality, or of actual disregard of the duties of a neutral, the United States were great sufferers. Before arriving at Trinidad the Sumter captured eleven American vessels.[1] After leaving that port, and before arriving at Gibraltar, she captured six other vessels belonging to citizens of the United States. The injury did not stop there. The United States made diligent efforts to capture this vessel which was destroying their commerce. For this purpose they dispatched across the Atlantic two of their men-of-war, the Kearsarge and the Tuscarora. These vessels followed on the track of the Sumter, and the plans of the United States would have been successful had Earl Russell's instructions of January 31, 1862, been carried out toward the Sumter in the port of Gibraltar, as they were carried out toward the vessels of the United States in all the colonial ports of Great Britain.

Under these circumstances, the United States ask the Tribunal to find and certify as to the Sumter that Great Britain, by the acts or omissions hereinbefore recited or referred to, failed to fulfill the duties set forth in the three rules in Article *VI of the Treaty of Washing- [328] ton, or recognized by the principles of International Law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty, to award a sum in gross to be paid to the United States, they will ask that, in considering the amount so to be awarded, the losses of individuals in the destruction of their vessels and cargoes by the Sumter, and also the expense to which the United States were put in the pursuit of that vessel, may be taken into account.

THE NASHVILLE.

The Nashville, a large paddle-wheel steamer, formerly engaged on the New York and Charleston line, lightened to diminish her draught, armed with two guns, and commanded by an officer who had been in the Navy of the United States, ran out from Charleston on the night of the 26th of October, 1861.[2] She arrived at the British port of St. George, Bermuda, on the afternoon of the 30th[3] of the same month, having been about three and a half days making the passage. She took on board there, by the permission of the Governor, six hundred tons of coal,[4] and this act was approved by Her Ma*jesty's prin- [329] cipal Secretary of State for the Colonies.[5] This approval seems to have been elicited by the complaints which had been made to the Governor by the Consul of the United States at that port.[6] It may also be that Her Majesty's Government preferred to have the question settled, before it could be made the subject of diplomatic representation on the part of the United States.

The Nashville.

In view of the rule as to supplies of coal which was soon after adopted by Her Majesty's Government, the United States insist, as they have already insisted in regard to the Sumter, that a supply of six hundred

[1] Bernard to Seward, Vol. II, page 485.
[2] Bernard's Neutrality of Great Britain, page 267.
[3] Wells to Seward, Vol. II, page 538.
[4] Governor Ord to the Duke of Newcastle, Vol. II, page 557.
[5] Duke of Newcastle to Governor Ord, Vol. II, page 558.
[6] Wells to Ord, Vol. II, page 539.

tons was greatly in excess of the needs of the Nashville. There are no means of knowing whether she had any coal on board at the time she arrived in the port of St. George. Assuming that she had none, the utmost she should have received was enough to take her back to Charleston, from which port she had just come in three days and a half. Instead of that, she received more than a supply for a voyage to Southampton. She left Bermuda on the afternoon of the 5th of November,[1] and anchored in Southampton waters on the morning of the 21st
[330] of the same month,[2] *having destroyed at sea the United States merchant-ship Harvey Birch[3] on the passage.

A correspondence ensued between Earl Russell and Mr. Adams as to the character of this vessel, in which Lord Russell said, "The Nashville appears to be a Confederate vessel of war."[4] She was received as such, was "taken into dock for calking and other repairs," and "received one hundred and fifty tons of coal" on the 10th of January. On the 25th "Captain Patey, of Her Majesty's Navy, reported the Nashville coaled and necessary repairs completed."[5]

On the 4th of the following February the Nashville left Southampton and proceeded to Bermuda, where she arrived on the evening of the 20th. On the day previous to that (the 19th) the Consul had received from the Governor the official notice already alluded to, that the Government of Her Britannic Majesty had determined not to allow the formation, in any British Colony, of a coal depot for the use of the vessels of war of the United States.[6] The Government of the United States was, therefore, not a little astonished to learn from the Consul at Bermuda that the Nashville had taken on board one hundred
[331] *and fifty tons of coal at that place, and that she left "under the escort of Her Majesty's steamer Spiteful."[7]

These circumstances, in accordance with the principles hereinbefore stated, justify the United States in asking the Tribunal of Arbitration as to this vessel, to find and certify that Great Britain, by the acts or omissions hereinbefore recited or referred to, failed to fulfill the duties set forth in the three rules in Article VI of the Treaty of Washington or recognized by the principles of International Law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty, to award a sum in gross to be paid to the United States, they will ask that, in considering the amount so to be awarded, the losses of individuals in the destruction of their vessels and cargoes by the Nashville, and also the expenses to which the United States were put in the pursuit of that vessel, may be taken into account.

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[332] *THE FLORIDA, AND HER TENDERS, THE CLARENCE, THE TACONY, AND THE ARCHER.

The Florida, originally known as the Oreto, was an iron-screw gunboat, of about seven hundred tons burden, bark-rigged, and had two smoke-stacks and three masts.[8] The contract for

The Florida and her tenders.

[1] Wells to Seward, vol. II, page 540.
[2] Captain Patey to the Secretary of the Admiralty, Vol. II, pages 543, 544.
[3] Russell to Adams, Vol. II, page 555.
[4] Vol. II, page 587.
[5] Ord to Allen, Vol. II, page 590.
[6] Adams to Seward, Vol. II, page 542.
[7] Allen to Seward, Vol. II, page 591.
[8] Dudley to Adams, Vol. II, page 594.

her construction was made with Fawcett, Preston & Co., of Liverpool, by Bullock, soon after he came to England in the summer of 1861. He was introduced to them by Prioleau, of the firm of Fraser, Trenholm & Co., in order that he might make the contract.[1]

It was pretended, for form's sake, that she was constructed for the Italian Government; but it was a shallow pretense, and deceived only those who wished to be deceived. The Italian Consul at Liverpool disclaimed all knowledge of her,[2] and people at that port who were familiar with ship-building understood from the first that she was being built for the Southern insurgents.[3]

The precise date of the making of the contract cannot be given by the United States. The *range of time within which it [333] must have been made can be determined. Bullock left England in the autumn of 1861, at or about the time that the Bermuda sailed with Huse's first shipment of stores; and returned in March on the Annie Childs, which ran the blockade from Wilmington.[4] The contract was made before he left, and the Florida was constructed during his absence.

The contract for the construction of the hull was sub let by Fawcett, Preston & Co., to Miller & Sons, of Liverpool.[5] The payments to Miller & Sons were made by Fawcett, Preston & Co.; the payments to Fawcett, Preston & Co. were made by Fraser, Trenholm & Co.

By the 4th of February the Florida was taking in her coal, and appearances indicated that she would soon leave without her armament.[6] She made her trial trip on the 17th of February. By the 1st of March she had taken in her provisions, "a very large quantity, enough for a long cruise," and was "getting as many Southern sailors"[7] as possible. She was registered as an English vessel.[8] Although apparently ready to sail, she lingered about Liverpool, which gave rise to some speculations in the minds of the people of that town. It *was [334] said that she had "injured herself and was undergoing repairs."[9] The mystery was solved by the arrival, on the 11th of March, in the Mersey, of the Annie Childs from Wilmington, bringing as passengers Captain Bullock[10] and four other insurgent naval officers, who came on board of her "some twenty miles down the river from Wilmington,"[11] and who were to take commands on the vessels which were contracted for in Liverpool. As soon as they arrived they went on board the Florida, and were entertained there that evening.[12] On the 22d of March the Florida took her final departure from the Mersey,[13] with "a crew of fifty-two men, all British, with the exception of three or four, one of whom only was an American."[14] She was consigned by Bullock to Heyliger. Another account says that she was consigned to Adderly & Co.

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[1] Prioleau's evidence, Vol. VI, page 181.
[2] Dudley to Seward, Vol. II, page 592.
[3] See Mr. Dudley's dispatches of January 24 and 31, and of February 4, 12, 17, 19, 21, 22, 26, and 27, and of March 1, 5, 12, 15, 19, and 22, in the year 1862, Vol. VI, page 214, *et seq.*
[4] Dudley to Seward, March 12, 1862, Vol. VI, page 223.
[5] Same to same, February 12, 1862, Vol. VI, page 215.
[6] Dudley to Seward, Vol. II, page 592; Vol. VI, page 215.
[7] Same to same, Vol. II, page 596; Vol. VI, page 220.
[8] Same to same, Vol. II, page 597; Vol. VI, page 221.
[9] Dudley to Seward, March 7, 1862, Vol. VI, page 222.
[10] Same to same, March 22, 1862, Vol. VI, page 224.
[11] Dudley to Adams, Vol. II, page 601.
[12] Vol. II, page 601.
[13] Vol. II, page 604.
[14] Customs Report, Vol. II, page 605; Vol. VI, page 231.

Simultaneously with these proceedings, shipments were being made at Hartlepool, on the eastern coast of England, of cannon, rifles, shot, shells, &c., intended for the Florida. They were sent from Liverpool to Hartlepool by rail, and there put on board the steamer Bahama for Nassau.

[335] It was a matter of public notoriety that this was *going on.[1] All the facts about the Florida, and about the hostile expedition it was proposed to make against the United States, were open and notorious at Liverpool. Mr. Dudley's correspondence, already cited, was full of it. The means of intelligence were as accessible to British authorities as to the consular officers of the United States. Nevertheless, it was esteemed to be the duty of the officers of the United States to lay what had come to their knowledge before Her Majesty's Government. Mr. Dudley, the Consul at Liverpool, wrote to Mr. Adams that he had information from many different sources as to the Oreto, "all of which goes to show that she is intended for the Southern Confederacy."[2] Mr. Adams transmitted the intelligence to Earl Russell, and said that he "entertained little doubt that the intention was precisely that indicated in the letter of the Consul, the carrying on war against the United States." * * * He added, "Should further evidence to sustain the allegations respecting the Oreto be held necessary to effect the object of securing the interposition of Her Majesty's Government, I will make an effort to procure it in a more formal manner."[3]

[336] The United States ask the Tribunal to observe *that, notwithstanding this offer, *no objection was taken as to the form of the information submitted by Mr. Adams, nor was he asked by Earl Russell for further particulars.* Lord Russell, however, in reply, transmitted to Mr. Adams a report of the British Commssioners of Customs, in which t was stated that the Oreto was a vessel of war, "pierced for four guns;" that she was "built by Miller & Sons for Fawcett, Preston & Co.," and was "intended for the use of Messrs. Thomas Brothers, of Palermo;" that she "had been handed over to Messrs. Fawcett & Preston; that Miller & Son stated their belief that the destination was Palermo;" and that "the examiners had every reason to believe that the vessel was destined for the Italian Government."[4] Further representations being made by Mr. Adams, the same officers subsequently reported that, having received directions "to inquire into the further allegations made in regard to the Oreto," they found "that the vessel in question was registered on the 3d of March in the name of John Henry Thomas, of Liverpool, as sole owner; that she cleared on the following day for Palermo and Jamaica, in ballast, but did not sail until the 22d, * * * having a crew of fifty-two men, all British,

[337] with the exception of *three or four, one of whom only was an American."[5]

The Tribunal of Arbitration will observe that even from the reports of these British officers it is established that the Florida was a vessel of war, "pierced for four guns;" and also that notwithstanding their alleged belief that she was intended for the King of Italy, she was allowed to clear for Jamaica in ballast. Attention is also invited to the easy credulity of these officials, who, to the first charges of Mr. Adams, replied by putting forward the "belief" of the builders as to the destination

[1] See Mr. Dudley's dispatches of March 7, 12, and 15, Vols. II and VI.
[2] Dudley to Adams, Vol. II, page 594; Vol. VI, page 216.
[3] Adams to Russell, Vol. II, page 593; Vol. VI, page 216.
[4] Vol. II, pages 595, 96; Vol. VI, page 218.
[5] Vol. II, page 605; Vol. VI, page 231.

of the vessel, and who met his subsequent complaints by extracting from the custom house records the false clearance which Bullock, and Frazer, Trenholm & Co., had caused to be entered there. Such an examination and such a report can scarcely be regarded as the exercise of the "due diligence" called for by the rules of the Treaty of Washington.

The Florida arrived at Nassau on the 28th of April, and was taken in charge by Heyliger, who was then a well-known and recognized insurgent agent. The Bahama arrived a few days later at the same port by preconcerted arrangement. The two branches of the hostile expedition, which had left Great Britain in detachments, were thus *united in British waters. They were united in their conception [338] in the contracts with Fawcett, Preston & Co. They were temporarily separated by the shipment of a portion of the ammunition and stores by rail to Hartlepool, and thence by the Bahama. They were now again united, and the vessels went together to Cochrane's Anchorage, a place about nine miles from the harbor of Nassau, not included in the port limits.

While there Captain Hickley, of Her Majesty's ship Greyhound, thought it his duty to make a careful examination of the vessel, and he reported her condition to the Governor. In a remarkable certificate, signed by himself, and by the officers of the Greyhound, dated June 13, 1862, it is stated that he "asked the Captain of the Oreto whether the Oreto had left Liverpool in all respects as she was then; his answer was yes; in all respects."[1] As, therefore, no changes had been made in her after leaving Liverpool, Captain Hickley's report may be taken to be the official evidence of a British expert as to her character, at the time of Mr. Adams's complaints, and of the customs examinations. He says, "I then proceeded to examine the vessel, and found her in every respect fitted as a war vessel, precisely the same as vessels of a similar class in Her Majesty's Navy. She *has a magazine and light- [3[illegible] rooms forward, handing-rooms and handing-scuttles for powder as in war vessels; shell-rooms aft, fitted as in men-of-war; a regular lower deck with hammock-hooks, mess-shelves, &c., &c., as in our own war vessels, her cabin accommodations and fittings generally being those as fitted in vessels of her own class in the Navy. * * * She is a vessel capable of carrying guns; she could carry four broadside-guns forward, four broadside-guns aft, and two pivot-guns amidships. Her ports are fitted to ship and unship; port-bars cut through on the upper part to unship also. The construction of her ports, I consider, are peculiar to vessels of war. I saw shot-boxes all round her upper deck, calculated to receive Armstrong shot, or shot similar. She had breeching bolts and shackles, and side-tackle bolts. Magazine, shell-rooms, and light-rooms are entirely at variance with the fittings of a merchant-ship. She had no accommodation whatever for the stowage of cargo; only stowage for provisions and stores. She was in all respects fitted as a vessel of war of her class in Her Majesty's Navy. * * * *The Oreto, as she now stands, could, in my professional opinion, with her crew, guns, arms, and ammunition, going out with another vessel alongside of her, be equipped in twenty-four hours for battle.*"[2]

*The judge before whom the case was tried, commenting on this [340] evidence, said: "Captain Hickley's evidence as to the construction and fittings of the vessel I should consider conclusive even had there been no other; *but that construction and those fittings were made, not here, but in England.*"[3]

[1] Vol. VI, page 246. [2] Vol. VI, pages 264 and 266. [3] Vol. V, page 513.

was, therefore, the condition of the Florida when she left Liverpool. That she was then "intended to cruise and carry on war" against the United States there can be no reasonable doubt; that she was "fitted out" and "equipped" within the jurisdiction of Great Britain, with all the fittings and equipments necessary to enable her to carry on such war, is equally clear from Captain Hickley's professional statement. "Arming" alone was necessary to make her ready for battle. By the rules of the Treaty of Washington either the "fitting out" or the "equipping" constitute an offense without the "arming." That Great Britain had reasonable ground to believe that the fitting out and the equipping had been done within its jurisdiction, with intent that she should carry on such a war, the United States claim to have substantiated. That she had been specially adapted within British jurisdiction, to wit, at Liverpool, to warlike use, will scarcely be questioned
[341] after the positive testimony of Captain Hickley. That her *departure from the jurisdiction of Great Britain might have been prevented after the information furnished by Mr. Adams would seem to be beyond doubt. And that a neglect to prevent such departure was a failure to use the "due diligence" called for by the second clause of the first rule of the Treaty obviously follows the last conclusion. If these several statements are well founded, Great Britain, by permitting the construction of the Florida, at Liverpool, under the circumstances, and by consenting to her departure from that port, violated its duty as a neutral Government toward the United States.

The United States Consul, soon after the arrival of the Oreto at Nassau, called the attention of the Governor to her well-known character.[1] The Governor declined to interfere, and with an easy credulity accepted the statements of the insurgent agents that the vessel was not and would not be armed,[2] and he made no further inquiries. She was then permitted to remain at Cochrane's Anchorage. A second request to inquire into her character was made on the 4th of June, and refused.[3]

On the 7th of June both the Oreto and the Bahama were arrested
[342] and brought up from *Cochrane's Anchorage into the harbor of Nassau. On the 8th the mail steamer Melita arrived from England, with Captain Raphael Semmes and his officers from the Sumter as passengers. They "became lions at once."[4] The Oreto was immediately released. The Consul reported this fact to his Government, and said that "the character of the vessel had become the theme of general conversation and remark among all classes of the citizens of Nassau for weeks."[5] On the same day Captain Hickley, whose professional eye had detected the purpose of the vessel from the beginning, signed with his officers the certificate quoted above.

The Consul, finding that renewed representations to the Governor[6] were met by an answer that the agents of the Oreto assured him of their intention to clear in ballast for Havana, and that he had given his assent to it,[7] applied to Captain Hickley, of the Greyhound, and laid before him the evidence which had already been laid before the civil authorities. He answered by sending a file of marines on board the Oreto and taking her into custody.[8]

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[1] Consul Whiting to Governor Bayley, May 9, 1862, Vol. VI, page 235.
[2] Nesbitt to Whiting, May 13, 1862, Vol. VI, page 236.
[3] Vol. VI, pages 238, 239.
[4] Whiting to Seward, June 19, 1862, Vol. VI, page 241.
[5] Whiting to Seward, June 13, 1862, Vol. VI, page 242.
[6] Whiting to Bayley, June 12, 1862, Vol. VI, page 243.
[7] Nesbitt to Whiting, June 13, 1862, Vol. VI, page 244.
[8] Whiting to Seward, June 18, 1862, Vol. VI, page 250.

The civil authorities at Nassau were all actively *friendly to [343] the insurgents. With the Consul of the United States they had only the formal relations made necessary by his official position. With the insurgents it was quite different. We have already seen how Heyliger thought they regarded him. Maffitt, Semmes, and many other insurgent officers were there, and were often thrown in contact with the Government officials. Adderley, the correspondent of Fraser, Trenholm & Co., and the mercantile agent of the insurgents, was one of the leading merchants of the colony. Harris, his partner, was a member of the Council, and was in intimate social relations with all the authorities. The principal law officer of the colony, who would have charge of any prosecution that might be instituted against the Oreto and the cross-examination of the witnesses summoned in her favor, was the counsel of Adderley. All these circumstances, combined with the open partiality of the colonial authorities for the cause of the South, threw the insurgent agents and officers at that critical moment into intimate relations with those local authorities.[1]

If it had been predetermined that the Oreto should be released by going through the form of a trial under the Foreign Enlistment Act,[2] the steps could not have been better directed for that pur- *pose. The trial commenced on the 4th of July, 1862.[3] The [344] prosecution was conducted by a gentleman who was at once Crown Counsel, Advocate General, and confidential counsel of Adderley & Co. and who, in a speech made in a trial in another court, which took place after the Oreto was libeled and before the decree was rendered, said that the Union of the United States was "a myth, a Yankee fiction of the past, now fully exploded."[4] The temper with which he would manage the prosecution of the Oreto may be imagined from this speech. He hurried on the trial before evidence could be obtained from Liverpool. He conducted his cross-examinations so as to suppress evidence unfavorable to the Oreto, when it could be done. He neglected to summon witnesses who must have been within his control, who could have shown conclusively that the Oreto was built for the insurgents, and was to be converted into a man-of-war.[5] Maffitt knew it, but was not called.[6] Heyliger knew it, but was not called. Adderley *knew it, but he was not called. Evans and Chapman were both [345] there—officers in the insurgents' navy, under the direction of Maffitt, drawing pay from him as an officer in that navy, and giving receipts as such.[7] They knew all about it, but were not called. Harris,[8] a member of the firm of Adderley & Co., was called, but his cross-examination was so conducted as to bring out nothing damaging to the vessel.[9] He said, for instance, that the Oreto was consigned to him by

[1] Kirkpatrick to Seward, Vol. VI, page 327.

[2] This seemingly harsh statement is fully borne out by the report of the trial. See Vol. V, page 509.

[3] Governor Bayley to Captain Hickley, June, 1862.

[4] Whiting to Seward, August 1, 1862, Vol. VI, page 261.

[5] If the Tribunal will read the summary of this case in the opinion of the court, which may be found at page 509 of Vol. V, it will be found that this statement is not too strong.

[6] The Oreto had in fact been ordered by Bullock, as agent of the Confederate Government, from one ship-building firm, as the Alabama had been ordered by him from another; and Captain Maffitt, the officer appointed to command her, was all this while at Nassau, waiting the result of the trial.—*Bernard's Neutrality of Great Britain*, page 351.

[7] See Evans and Chapman's vouchers, Nassau, July 28, Vol. VI, page 330.

[8] See Consul Kirkpatrick's dispatch to Mr. Seward, July 7, 1865, as to the standing of these men, Vol. VI, page 327.

[9] Vol. V, page 517.

Fraser, Trenholm & Co., and was to clear for St. John's, New Brunswick. It might have been supposed that counsel desirous of ascertaining the truth would have followed up these clews, and would have shown from this witness the origin and the real purposes of the vessel; but that was not done.

The direct examination of Captain Hickley, of the Greyhound, disclosed that officer's opinion of the character and destination of the Oreto. His cross-examination was conducted by a gentleman who was represented to be the Solicitor General of the Colony, but who, in this case, appeared against the Crown. The testimony of sailors was also
[346] received to show that the vessel carried Con*federate flags, and that Semmes and the other insurgent officers were in the habit of visiting her.

The judge, in deciding the case, disregarded the positive proof of the character, intent, and ownership of the vessel. He said that he did not believe the evidence as to the insurgent flags, coming from common sailors, and he added, "Had there been a Confederate flag on board the Oreto, I should not consider it as very powerful evidence." The overwhelming testimony of Captain Hickley and his officers was summarily disposed of. To this he said, "I have no right whatever to take it into consideration; the case depends upon what has been done since the vessel came within this jurisdiction." While thus ruling out either as false or as irrelevant evidence aga nst the vessel which events proved to be true and relevant, he gave the willing ear of credence to the misstatements of the persons connected with the Oreto. He could see no evidence of illegal intent in the acts of those who had charge of the Oreto. It is no wonder that the trial ended on the 2d of August with a judgment that, "Under all these circumstances I do not feel that I should be justified in condemning the Oreto. She will therefore be restored."[1]

The United States call the attention of the Arbitrators to the
[347] important fact that the princi*pal ground on which this vessel was released, namely, the irrelevancy of the evidence of Captain Hickley and his associates, was believed by Her Majesty's Government not to be in accordance with British law. When the news of the seizure of the Oreto arrived at London, Earl Russell directed inquiries to be made, "in order that a competent officer should be sent to Nassau in order to give evidence as to what occurred at Liverpool in the case of that vessel."[2] Her Majesty's Government evidently considered that it would be relevant and proper to show the condition of the vessel when she left Liverpool; and should it appear, as it did appear in Captain Hickley's testimony, that at the time of her leaving she was fitted out as a man-of-war, with intent to cruise against the United States, then it would be entirely within the scope of the powers of the court in Nassau to condemn her for a violation of the Foreign Enlistment Act of 1819. Had the trial not been hurried on, such probably would have been the instructions from London.

Both before and after the release of the Oreto, Maffitt was shipping a crew at Nassau. One witness deposes[3] to shipping forty men.
[348] On the 8th of August she cleared for St. John's, New *Brunswick. This was on its face a palpable fraud. On the 9th the schooner Prince Alfred went to the wharf of Adderley & Co., the Nassau correspondents of Fraser, Trenholm & Co., and there took on board eight cannon and a cargo of shot, shells, and provisions, and then went

[1] Vol. V, page 521; Vol. VI, page 285.
[2] Vol. II, pages 610, 611.
[3] Solomon's deposition, Vol. VI, page 310.

over the bar and laid her course for Green Cay, one of the British Bahama Islands, about sixty miles distant from Nassau. The Oreto, having been thoroughly supplied with coal while at the island of New Providence, lay outside with a hawser attached to one of Her Majesty's ships of war. When the Prince Alfred appeared she cast off the hawser and followed and overtook the Prince Alfred, and gave her a tow. It was a bright moonlight night, with a smooth sea, and the voyage was soon made. The arms and ammunition, and so much of the supplies as she had room for, were then transferred to the Oreto; the rest were taken back to Nassau, where the Prince Alfred went unmolested for her violation of the law. The two vessels parted company, and the Oreto, now called the Florida, made for the coast of Cuba.

The United States ask the Tribunal of Arbitration to find that in these proceedings which took place at Nassau and in the Bahamas, Great Britain was once more guilty of a violation of its duty, as a neutral, toward the United States, in regard to this vessel.

[349] *The Oreto had been, within the jurisdiction of Great Britain at Liverpool, specially adapted to warlike use, with intent that she should cruise or carry on war against the United States. She had come again at Nassau within the jurisdiction of Her Majesty, and no steps were taken to prevent her departure from that jurisdiction. This alone was a violation of the duties prescribed by the second clause of the first rule of the Treaty; but it was not the only failure of Her Majesty's officials to perform their duties at that time as the representative of a neutral Government.

The Oreto was armed within British jurisdiction; namely, at Green Cay. The arrangements for arming, however, were made in the harbor of Nassau; and the two vessels left that port almost simultaneously, and proceeded to Green Cay together. The purpose for which they went was notorious in Nassau. This was so palpable an evasion that the act should be assumed as having taken place in the harbor of Nassau. In either event, however, the act was committed within British jurisdiction, and was therefore a violation of the first clause of the first rule of the Treaty.

In like manner, the same acts, and the enlistment of men at New Providence, were violations of the second rule of the Treaty. There was no diligence used to prevent any of these illegal acts.

[350] *From Green Cay the Florida went to Cardenas, in the island of Cuba, and attempted to ship a crew there. "The matter was brought to the notice of the Government, who sent an official to Lieutenant Stribling, commanding during Lieutenant Commanding J. N. Maffitt's illness, with a copy of the [Spanish] Queen's Proclamation, and notification to him that the Florida had become liable to seizure."[1] This efficient conduct of the Spanish authorities made the officers of the Florida feel at once that they were no longer in British waters. She left Cuba, and on the 4th of September she ran through the blockading squadron of Mobile, pretending to be a British man-of-war, and flying British colors.

During the night of the 16th of January, 1863, the Florida left Mobile. On the morning of the 26th of the same month she re-entered the harbor of Nassau. Between Mobile and Nassau she had destroyed three small vessels, the Corris Ann, the Estelle, and the Windward. At Nassau she was received with more than honor. She "entered the port without any restrictions,"[2] and "the officers landed in the garrison boat, escorted

[1] Copy of voucher of Manuel Corany, Vol. VI, page 331.
[2] Whiting to Seward, January 26, 1863, Vol. VI, page 333.

by the post adjutant, Lieutenant Williams, of the Second West India Regiment."[1] The Governor made a feint of finding fault with the
[351] mode in which she had entered, but *ended by giving her all the hospitality which her commander desired. She was at Nassau for thirty-six hours,[2] and while there she took in coal and provisions to last for three months.[3] This coal was taken on board by "permission of the authorities."[4]

The attention of the Tribunal of Arbitration is also invited to the excess of these and all similar hospitalities, as violations of the instructions issued on the 31st of January, 1862.[5]

"These orders required every ship of war or privateer of either belligerent, which should enter British waters, to depart within twenty-four hours afterward, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs. In either of these cases she was to put to sea as soon after the expiration of the twenty-four hours as possible, taking in no supplies beyond what might be necessary for immediate use, and no more coal
[352] than would carry her to the nearest port of *her own country, or some nearer destination, nor after coaling once in British waters was she to be suffered to coal again within three months, unless by special permission."[6]

These rules were rigidly enforced against the United States. They were not only relaxed, but they were oftentimes utterly disregarded in the treatment of the insurgent vessels.

The Florida when at Nassau, in the months of May, June, and July, 1862, and again in the month of January, 1863, was distant from Wilmington, Charleston, or Savannah, only two, or at most three, days' steaming. She ordinarily sailed under canvas. Even when using steam in the pursuit and capture of vessels her consumption of coal, as shown by her log-book, did not average four tons a day. Thirty tons, (more than the amount taken by the United States Steamer Dacotah September, 1862,) was all that she should have been allowed to take on board under the instructions, even had she been an honest vessel, and one that Great Britain was not bound to arrest and detain. Yet in July, 1862, she received all the coal she wanted, and in January, 1863, she took on board a three months' supply.

The Tribunal also will note that in January, 1863, the entry
[353] into the harbor, though made *without permission, was condoned; that the visit lasted thirty-six hours instead of twenty-four; and that the "supplies" exceeded largely what was immediately necessary for the subsistence of the crew.

The excessive hospitality was in striking contrast with the receptions given to vessels of the United States at that port. It has already been shown that in December, 1861, the United States had been forbidden to land coals at Nassau or Bermuda, except on condition that it should not be used for their vessels of war. It has also been shown that in

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[1] Whiting to Seward, 26th January, 1863, Vol. III, page 333.

[2] Whiting to Seward, January 27, 1863, Vol. VI, page 333.

[3] Journal quoted ante, page —. See also Vol. II, page 617. See also Vol. VI, page 335, the deposition of John Demerith, who says, "We filled her bunkers with coal, and placed some on deck, and in every place that could hold it. I suppose that she had on board over one hundred and eighty tons that we put there. She did not have less than that quantity. The coal was taken from the wharves and from vessels in the harbor. The money for coaling her was paid from Mr. Henry Adderley's store."

[4] Whiting to Wells, Vol. II, page 616.
Vol. IV, page 175.

[5] Bernard's Neutrality of Great Britain, pages 265 and 266.

September, 1862, the United States war-steamer Dacotah was forbidden to take more than twenty tons of coal, and that only upon condition that for ten days she would not re-appear in British waters. On the 20th of the previous November the commander of the Wachusett was informed that he could not be allowed even to anchor, or to come within three miles of the shore, without permission of the Governor. In fact, the indignities to which the vessels of the United States were subjected were so great that the Rear-Admiral in command of the fleet, on the 2d of January, 1863, wrote to the Secretary of the Navy, "I have not entered any British port except Bermuda, nor do I intend to enter, or permit any of the vessels of the squadron to ask permission to *enter, or subject myself and those under my command to the [354] discourtesies those who had entered heretofore had received."[1]

The United States insist that these excessive hospitalities to the Florida and these discourtesies to the vessels of war of the United States constituted a further violation of the duties of Great Britain as a neutral. By furnishing a full supply of coal to the Florida, after a similar hospitality had been refused to the vessels of the United States, the British officials permitted Nassau to be made a base of hostile operations against the United States; and for this, as well as for other violations of duty as to that vessel, which have been already noticed, Great Britain became liable to the United States for the injuries resulting from her acts.

The Florida left the port of Nassau on the afternoon of the 27th of January, 1863. By the middle of the following month her coal was getting low. On the 26th day of February Admiral Wilkes, in command of the United States Squadron in the West Indies, wrote to his Government thus: "The fact of the Florida having but a few days' coal makes me anxious to have our vessels off the Martinique, which is the only island at which they can hope to get any coal supplies, the English islands being *cut off under the rules of her Majesty's [355] Government for some sixty days yet, which precludes the possibility, unless by chicanery or fraud, of the hope of any coal or comfort there."[2] Admiral Wilkes's hopes were destined to disappointment. On the 24th of February, two days before the date of his dispatch, the Florida had been in the harbor of Barbadoes, and had taken on board about one hundred tons[3] of coal in violation of the instructions of January 31, 1862.

Rear-Admiral Wilkes, hearing of this new breach of neutrality, visited Barbadoes ten days later to inquire into the circumstance. He addressed a letter to the Governor, in which he said, "I have to request your Excellency will afford me the opportunity of laying before my Government the circumstances under which the Florida was permitted to take in a supply of coal and provisions to continue her cruise and operations, after having so recently coaled and provisioned at Nassau, one of Her Majesty's colonies in the West Indies, ample time having been afforded, some thirty days, for the information to have reached this island and Government; and if any cause existed why an investigation was not instituted after the letter to your Excellency was received from *the United States Consul."[4] The Governor evaded [356] the question. He "doubted very much whether it would be desirable to enter into correspondence upon the points adverted to," and

[1] Rear-Admiral Wilkes to the Secretary of the Navy, January 2, 1873.
[2] Admiral Wilkes to Mr. Welles, Vol. VI, page 338.
[3] Trowbridge to Seward, Vol. II, page 619; Vol. VI, page 339.
[4] Wilkes to Walker, Vol. II, page 628; Vol. VI, page 343.

said that "in sanctioning the coaling of the Florida, he did no more than what he had sanctioned in the case of the United States steamer of war San Jacinto."[1] There was no parallel or even resemblance between the treatment of the San Jacinto and that of the Florida. On the 13th of November, 1863, the San Jacinto received seventy-five tons of coal and some wood at Barbadoes. With that exception she received no coal or other fuel from a British port during that cruise.[2]

Under these circumstances the United States must ask the Tribunal to declare that the burden is upon Great Britain to establish that this express violation of Her Majesty's Proclamation was innocently done. Whether done innocently or designedly, they insist, for the reasons already set forth, that the act was a new violation of the duties of a neutral, and furnished to the United States fresh cause of complaint against Great Britain.

Before completing the history of this vessel, the United States desire to show to the Tribunal how the vessels of the United States
[357] were received at *Barbadoes, the port at which the Florida received the last-mentioned supply of coal. They have already referred to the treatment of their vessels at Nassau and Bermuda. Captain Charles Boggs arrived at Barbadoes in April, 1865, in the United States war-steamer Connecticut, and made application for permission to remain there "a few days for the purpose of overhauling the piston and feed-pump of the engine."[3] The Governor replied, "It will be necessary for you, before I can give my sanction to your staying here longer than twenty-four hours, to give a definite assurance of your inability to proceed to sea at the expiration of that time, and as to the period within which it would be possible for you to execute the necessary repairs."[4] Captain Boggs replied, "Your letter virtually refuses the permission requested, inasmuch as it requires me to give a definite assurance of my inability to proceed to sea at the termination of twenty-four hours. This I cannot do, as an American man-of-war can always go to sea in some manner. I shall do this, although with risk to my vessel and machinery. Regretting that the national hospitality of remaining at anchor for the purposes named in my letter of this morning is
[358] refused, I have the honor to inform you that *I shall depart from this port to-morrow at 10 a. m."[5]

Barbadoes as well as Nassau having been thus made a base of hostile operations against the United States, the Florida again sailed out on her work of destruction on the evening of the 26th of February, 1863, and in a short time captured or destroyed the following vessels of the commercial marine of the United States, viz: the Aldebaran, the Clarence, the Commonwealth, the Crown Point, the General Berry, the Henrietta, the M. J. Colcord, the Lapwing, the Oneida, the Rienzi, the Southern Cross, the Star of Peace, the William B. Nash, and the Red Gauntlet. An intercepted letter from her commander to Bullock, dated April 25, 1863, says, "The Florida has thus far done her duty. Six million dollars will not make good the devastation this steamer has committed."[6]

On the 16th of July, 1863, the Florida arrived at Bermuda. She remained nine days in that port, and was thoroughly repaired both in her hull and machinery. She also took on board a full supply of the best

[1] Walker to Wilkes, Vol. II, page 629; Vol. VI, page 344.
[2] Robeson to Fish, Vol. VI, page 345.
[3] Captain Boggs to Governor Walker, Vol. VI, page 178.
[4] Governor Walker to Captain Boggs, Vol. VI, page 178.
[5] Captain Boggs to Governor Walker, Vol. VI, page 179.
[6] Vol. II, page 629; Vol. VI, page 346.

Cardiff coal, which had been brought to her from Halifax by the transport Harriet Pinckney.[1] This was permitted notwithstanding the general order that neither belligerent was to *be permitted to [359] make coal depots in British colonial ports.

Here, again, were fresh-recurring violations of the duties of Great Britain as a neutral, to be added to the accumulated charges that have already been made as to this vessel.

With the improvements, repairs, and supplies obtained at Bermuda the Florida started for Brest. In crossing the Atlantic she destroyed the Francis B. Cutting on the 6th of August, and the Avon on the 20th. On the 3d of September Maffitt reports from Brest to Bullock, at Liverpool, "a list of men discharged from the Florida, with their accounts and discharges," and he asks him "to provide them situations in the service."[2] We have already seen that when Bullock received this letter he was low in funds.[3] He was however, able to send from Liverpool to Brest for the Florida some new machinery and armament,[4] and also a crew.[5]

The Florida left Brest in January, 1864, and entered the port of Bermuda in the following May, remaining, however, only long enough to land a sick officer. In June she returned to that port and made application for permission to repair. The *Governor directed [360] an examination to be made by experts, who reported:[6] "1. She can proceed to sea with such repairs as can be made good here, which, as far as we can judge, will require five days for one man, viz, a diver for two days and a fitter for three days; or three complete days in all. 2. She can proceed to sea with safety in her present state under steam, but under sail is unmanageable with her screw up in bad weather, and her defects aloft (cross-trees) render maintop-mast unsafe. This could be made good in two days." On this report, the Florida received permission to remain there five days; she actually remained nine days While there she took on board one hundred and thirty-five tons of coal, half a ton of beef, half a ton of vegetables, a large supply of bread, provisions, and medicines, a large supply of clothing and other stores, and twenty days of carpenter's work were done upon the vessel.[7] Morris, the new commander, then drew upon Bullock, in Liverpool, in order to pay these bills, and provide himself with means for a cruise; and on the 27th of June, 1864, the Florida, being thus completely fitted out, left the port of Bermuda, and cruised off the harbor, boarding all vessels approaching the island.[8]

*The breach of neutrality and violation of the instructions [361] issued for the observance of British officials involved in these transactions were brought to Earl Russell's notice by Mr. Adams.[9] Earl Russell replied that "although some disposition was manifested by the commander of the Florida to evade the stringency of Her Majesty's regulations, the most commendable diligence and strictness in enforcing those regulations was observed on the part of the authorities, and no

[1] Consul's report to Mr. Seward.
[2] Vol. II, page 639; Vol. VI, page 349.
[3] Ante, page —.
[4] Dudley to Seward, January 21, 1864. Fraser, Trenholm & Co. to Barney, September 22, 1863, Vol. VI, page 352.
[5] Morse to Seward, January 8, 1864, Vol. VI, page 353.
[6] Vol. VI, page 357.
[7] See the vouchers for their payments, Vol. VI, page 358, *et seq.*
[8] Welles to Seward, Vol. II, page 652.
[9] Adams to Russell, Vol. II, page 651.

substantial deviation, either from the letter or from the spirit of those regulations, was permitted to or did take place."[1]

With the evidence now submitted to the Tribunal, which are the original vouchers for the purchases made at Bermuda by the Florida, it is evident that Earl Russell must have been misinformed when he stated that there had been no deviation from the regulations. The five days' stay which was granted was extended to nine. Twenty days' carpenter-work were done instead of five; supplies for a cruise were taken instead of supplies for immediate use; clothing, rum, medicines, and general supplies were taken, as well as supplies for the subsistence of the crew; one hundred and thirty-five tons of coal were
[362] *taken instead of twenty. In all this the United States find fresh and cumulative cause of complaint on account of this vessel.

They also call the particular attention of the Tribunal to the fact that at that time there was no necessity of making any repairs to the Florida. The experts employed by the Governor to make the examination reported, "*She can proceed to sea with safety in her present state under steam.*" The repairs, therefore, were only necessary to enable her to use her sails, banking her fires,[2] and laying to for the purpose of watching and destroying the commerce of the United States. Permitting any repairs to be made at that time was another violation of the duties of Great Britain as a neutral toward the United States.

The Florida left Bermuda on the 27th of June, 1864. On the 1st of July she destroyed the Harriet Stevens; the Golconda on the 8th; the Margaret Y. Davis on the 9th; the Electric Spark on the 10th; and the Mondamin on the 26th of September, all being vessels belonging to the commercial marine of the United States. On the 7th of October, 1864, her career as an insurgent cruiser terminated at Bahia.

During her cruise, three tenders were fitted out and manned
[363] from her officers and crew. The *Clarence was captured by her off the coast of Brazil on the 6th of May, 1863. She was then fitted out with guns, officers, and men, and during the first part of the month of June, 1863, captured and destroyed the Kate Stewart, the Mary Alvina, the Mary Schindler, and the Whistling Wind. On the 10th of that month she captured the Tacony. The Clarence was then destroyed, and the Tacony was converted into a tender, and, in the same month, destroyed the Ada, the Byzantian, the Elizabeth Ann, the Goodspeed the L. A. Macomber, the Marengo, the Ripple, the Rufus Choate, and the Umpire.[3] On the 25th she captured the Archer. The crew and armament were transferred to that vessel, and the Tacony burned. On the 27th the United States revenue-cutter Caleb Cushing was destroyed by the Archer.

The amount of the injury which the United States and its citizens suffered from the acts of this vessel and of its tenders will be hereafter stated. The United States with confidence assert that they have demonstrated that Great Britain, by reason of the general principles above stated, and in consequence of the particular acts or omissions hereinbefore recited, failed to fulfill all of the duties set forth in the three rules of the sixth article of the Treaty, or recognized by the
[364] *principles of International Law not inconsistent with such rules, and they ask the Tribunal to certify that fact as to the Florida and as to its tenders. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty to award a sum in gross to

[1] Russell to Adams, Vol. II, page 653.
[2] Maffitt to Barney, Vol. VI, pages 351, 352.
[3] Vol. VI, page 370.

be paid to the United States, they ask that in considering the amount so to be awarded, the losses of individuals in the destruction of their vessels and cargoes, by the Florida, or by its tenders, and also the expenses to which the United States were put in the pursuit of either of those vessels, may be taken into account.

THE ALABAMA, AND HER TENDER, THE TUSCALOOSA.

The Alabama, and her tender, the Tuscaloosa.

The Alabama, a vessel which has given the generic name to the claims before this Tribunal, is thus described by Semmes, her commander: "She was of about 900 tons burden, 230 feet in length, 32 feet in breadth, 20 feet in depth, and drew, when provisioned and coaled for cruise, 15 feet of water. She was barkentine-rigged, with long lower masts, which enabled her to carry large fore and aft sails, as jibs and try-sails. The scantling of the vessel was light compared with vessels of her class in the Federal Navy, but this was scarcely a disadvantage, as she was designed *as a scourge [365] of the enemy's commerce rather than for battle. Her engine was of 300 horse-power, and she had attached an apparatus for condensing from the vapor of sea-water all the fresh water that her crew might require. * * * Her armament consisted of eight guns; six 32-pounders in broadside, and two pivot-guns amid-ship, one on the forecastle, and the other abaft the mainmast, the former a 100-pounder rifled Blakeley, and the latter a smooth-bore 8-inch."[1]

The Alabama was built and, from the outset, was "intended for a Confederate vessel of war."[2] The contract for her construction was "signed by Captain Bullock on the one part and Messrs. Laird on the other." The date of the signature cannot be given exactly. The drawings were signed October 9, 1861, and it is supposed that the contract was signed at or about the same time. "The ship cost in United States money about $255,000." The payments were made by the agents of the insurgents. Bullock "went almost daily on board the gun-boat, and seemed to be recognized in authority;" in fact, "he superintended the building of the Alabama."[3]

On the 15th of May she was launched under the *name of the [366] 290.[4] Her officers were in England awaiting her completion, and were paid their salaries "monthly, about the first of the month, at Fraser, Trenholm & Co.'s office in Liverpool."[5]

The purpose for which this vessel was being constructed was notorious in Liverpool. Before she was launched she became an object of suspicion with the Consul of the United States at that port, and she was the subject of constant correspondence on his part with his Government and with Mr. Adams.[6]

The failure of Mr. Adams to secure in the previous March the interference of Her Majesty's Government to prevent the departure of the Florida, appears to have induced him to think that it would be necessary to obtain strictly technical proof of a violation of the municipal law of England before he could hope to secure the detention of the then

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[1] Semmes's Adventures Afloat, pages 402, 403.
[2] Journal of an officer of the Alabama. See Vol. IV, page 181.
[3] Dudley to Edwards, Vol. III, page 17; Vol. VI, page 383.
[4] Dudley to Seward, Vol. III, page 1; Vol. VI, page 371.
[5] Vol. III, page 146; Vol. VI, page 435.
[6] See Vol. III, *passim*.

nameless Alabama. That he had good reason to think so is not open to reasonable doubt. On the 23d of June he thought he had such proof. He wrote to Earl Russell that day,[1] recalling to his recollection the fact that notwithstanding the favorable reports from the Liverpool customs in regard to the Florida, there was the strongest reason for
[367] *believing that she had gone to Nassau, and was there "engaged in completing her armament, provisioning, and crew," for the purpose of carrying on war against the United States.[2] He continued, "I am now under the painful necessity of apprising your Lordship that a new and still more powerful war-steamer is nearly ready for departure from the port of Liverpool on the same errand." "The parties engaged in the enterprise are persons well known at Liverpool to be agents and officers of the insurgents of the United States." "This vessel has been built and launched from the dock-yard of persons, one of whom is now sitting as a member of the House of Commons, and is fitting out for the especial and manifest object of carrying on hostilities by sea." He closed by soliciting such action as might "tend either to stop the projected expedition, or to establish the fact that its purpose is not inimical to the people of the United States."

Earl Russell replied that he had referred "this matter to the proper department of Her Majesty's Government,"[3] and on the 4th of July, 1862, he inclosed the customs report on the subject, in which it
[368] is stated that "the officers have at all *times free access to the building-yards of the Messrs. Laird, at Birkenhead, where the vessel is lying, and *that there has been no attempt, on the part of her builders, to disguise, what is most apparent, that she is intended for a ship of war.*" It was further said that "the description of her in the communication of the United States Consul is most correct, with the exception that her engines are not constructed on the oscillatory principle." "With reference to the statement of the United States Consul that the evidence he has in regard to this vessel being intended for the so-called Confederate Government in the Southern States is entirely satisfactory to his mind," it was said that "the proper course would be for the Consul to submit such evidence as he possesses to the collector at that port, who would thereupon take such measures as the Foreign Enlistment Act would require;" and the report closed by saying "that the officers at Liverpool will keep a strict watch on the vessel."[4] The point that the vessel was intended for a vessel of war being thus conceded, Mr. Adams thereupon, at once, relying upon the promise to keep watch of the vessel, instructed the Consul to comply with the directions indicated in the report of the Commissioners and furnish all the evidence
[369] in his *possession to the Collector of Customs at Liverpool.[5]

Mr. Dudley did so on the 9th of July, in a letter to the Collector of Liverpool,[6] and the attention of the Tribunal of Arbitration is called to the fact that every material allegation in that letter has been more than borne out by subsequent proof. The Collector replied that he was "respectfully of opinion that the statement made was not such as could be acted upon by the officers of the revenue unless legally sub-

[1] Adams to Russell, Vol. III, page 5; Vol. VI, page 375.
[2] The Florida arrived at Nassau April 28, and the Bahama with her armament a few days later. These facts were undoubtedly known to Lord Russell and to Mr. Adams when this letter was written.
[3] Russell to Adams, Vol. III, page 6; Vol. VI, page 376.
[4] Vol. III, page 7; Vol. VI, page 379.
[5] Adams to Wilding, Vol. III, page 8; Vol. VI, page 381.
[6] Dudley to Edwards, Vol. III, page 17; Vol. VI, page 383.

stantiated by evidence."[1] And again, a few days later, he said to Mr. Dudley, "The details given by you in regard to the said vessel are not sufficient, in a legal point of view, to justify me in taking upon myself the responsibility of the detention of this ship."[2]

Thus early in the history of this cruiser the point was taken by the British authorities—a point maintained throughout the struggle—that they would originate nothing themselves for the maintenance and performance of their international duties, and that they would listen to no representations from the officials of the United States which did not furnish technical evidence for a criminal prosecution under the Foreign Enlistment Act.

*The energetic Consul of the United States at Liverpool was [370] not disheartened. He caused a copy of his letter to be laid before R. P. Collier, Esq., one of the most eminent barristers of England, who, a few months later, became Solicitor General of the Crown, under Lord Palmerston's administration, and who is now understood to be the principal law adviser of the Crown.

Mr. Collier advised that "the principal officer of the customs at Liverpool * * be applied to to seize the vessel, with a view to her condemnation," and, "at the same time, to lay a statement of the fact before the Secretary of State for Foreign Affairs, coupled with the request that Her Majesty's Government would direct the vessel to be seized, or ratify the seizure if it has been made."[3]

It was useless to attempt to induce the collector to seize the vessel. Mr. Dudley thereupon set about to get the direct proof required by the authorities as to the character of the Alabama or 290. "There were men enough," he said, "who knew about her, and who understood her character, but they were not willing to testify, and, in a preliminary proceeding like this, it was impossible to obtain process to compel them. Indeed, no one in a hostile community like Liverpool, *where the feeling and sentiment are against us, would be a will- [371] ing witness, especially if he resided there, and was any way dependent upon the people of that place for a livelihood."[4] At last Mr. Dudley succeeded in finding the desired proof. On the 21st day of July, he laid it in the form of affidavits before the Collector at Liverpool in compliance with the intimations which Mr. Adams had received from Earl Russell.[5] These affidavits were on the same day transmitted by the Collector to the Board of Customs at London, with a request for instructions by telegraph, as the ship appeared to be ready for sea and might leave any hour.[6] Mr. Dudley then went to London, and on the 23d of July laid the affidavits before Mr. Collier for his opinion.[7] Copies of the affidavits will be found in Vol. III, page 21 to 28, and Vol. VI, page 391, *et seq.*

It is not necessary to dwell upon the character of this proof, since it was conclusively soon passed upon by both Mr. Collier and by Her Majesty's Government. It is sufficient to say that it showed affirmatively that the 290 was a "fighting vessel;" that she was "going out to the Government of the Confederate States of America to *cruise and commit hostilities against the Government and people [372]

[1] Edwards to Dudley, Vol. III, page 19; Vol. VI, page 385.
[2] Vol. VI, page 389.
[3] Vol. III, page 16; Vol. VI, page 388.
[4] Dudley to Seward, Vol. III, page 13.
[5] Dudley to Seward, Vol. III, page 13; Vol. VI, page 390.
[6] Collector to Commissioners, Vol. III, page 20; Vol. VI, page 395.
[7] Vol. III, page 29; Vol. VI, page 398.

of the United States of America;" "that the enlisted men were to join the ship in Messrs. Laird & Co.'s yard;" that they were enlisting men "who had previously served on fighting-ships;" that the enlistments had then been going on for over a month, and that there was need of immediate action by the British Government, if action was to be of any service in protecting its neutrality against violation.

Mr. Collier said immediately, "It appears difficult to make out a stronger case of infringement of the Foreign Enlistment Act, which, if not enforced on this occasion, is little better than a dead letter. It well deserves consideration whether, if the vessel be allowed to escape, the Federal Government would not have serious grounds of remonstrance."[1]

The 290 was at this time nearly ready for sea, and time was important. Mr. Dudley, through his counsel, in order that no time might be lost, on the same day laid Mr. Collier's new opinion before the Under Secretary of State for Foreign Affairs and before the Secretary of the Board of Customs. The Under Secretary "was not disposed to discuss the matter, nor did he read Mr. Collier's opinion."[2] The Secretary
[373] of the Board of *Customs said that the Board could not act without orders from the Treasury Lords.[3] The last of these answers was not communicated until the 28th of July.

The additional proof and the new opinion of Mr. Collier were also officially communicated to Her Majesty's Government through the regular diplomatic channels. On the 22d of July copies of the depositions of Dudley, Maguire, DaCosta, Wilding, and Passmore were sent to Lord Russell by Mr. Adams;[4] and on the 24th of July copies of the depositions of Roberts and Taylor were in like manner sent to Lord Russell. These were acknowledged by Lord Russell on the 28th.

On that day "these papers were considered by the Law Officers of the Crown; on the same evening their report was agreed upon, and it was in Lord Russell's hands early on the 29th. Orders were then immediately sent to Liverpool to stop the vessel."[5]

Thus it appears that this intelligence, which Great Britain regarded as sufficient to require the detention of the 290, was communicated to Her Majesty's Government in three ways: first, on the 21st of July,
[374] through the channel at Liverpool, *which had been indicated by Earl Russell; second, on the 22d by the solicitor of Mr. Dudley in person to the Customs and to the Under Secretary of State for Foreign Affairs at the Foreign Office; and thirdly, on the 23d and on the 24th by Mr. Adams officially. It also appears that the information communicated on the 21st was transmitted to London by the Collector, with the statement that the vessel might sail at any hour, and that it was important to give the instructions for detention by telegraph; and it still further appears that notwithstanding this official information from the Collector, the papers were not considered by the law advisers until the 28th, and that the case appeared to them to be so clear that they gave their advice upon it that evening. Under these circumstances, the delay of eight days after the 21st in the order for the detention of the vessel was, in the opinion of the United States, gross negligence on the part of Her Majesty's Government. On the 29th the Secretary of the Commission of the Customs received a telegram from Liverpool

[1] Vol. III, page 29; Vol. IV, page 398.
[2] Squary to Adams, Vol. III, page 29; Vol. VI, page 397.
[3] Vol. III, page 31; Vol. VI, page 406.
[4] Vol. III, page 21; Vol. VI, page 397.
[5] A speech delivered in the House of Commons on Friday, August 4, 1871, by Sir Roundell Palmer, M. P. for Richmond, page 16.

saying that "the vessel 290 came out of dock last night, and left the port this morning."[1] Mr. Adams was justly indignant at the failure of the customs authorities to redeem their voluntary promise to watch the vessel.[2]

*On the 31st of July Mr. Adams had a "conference with Lord [375] Russell at the Foreign Office," at which "his Lordship first took up the case of the 290, and remarked that a delay in determining upon it had most unexpectedly been caused by the sudden development of a malady of the Queen's Advocate, Sir John D. Harding, totally incapacitating him for the transaction of business. This had made it necessary to call in other parties, whose opinion had been at last given for the retention of the gun-boat, but before the order got down to Liverpool the vessel was gone. *He should, however, send directions to have her stopped* if she went, as was probable, to Nassau."[3] The judgment of Her Majesty's Government upon the character of the Alabama and upon the duty of Great Britain toward her was, therefore, identical with that of Mr. Collier.

The departure of the 290 from Birkenhead was probably, it may be said certainly, hastened by the illicit receipt of the intelligence of the decision of the Government to detain her.[4]

After leaving the dock she "proceeded slowly *down the Mer- [376] sey." Both the Lairds were on board, and also Bullock. On the way down the river Laird settled with the paymaster for some purchases for the vessel, and paid into his hands a small sum of money.[5]

At the bell-buoy the Lairds and the ladies left by a tug, and returned to Liverpool. The 290 slowly steamed on to Moelfra Bay, on the coast of Anglesey, where she remained "all that night, all the next day, and the next night." No effort was made to seize her.

During this time the tug Hercules, which had returned from the bell-buoy with the Lairds and the ladies, took on board at Liverpool a number of new hands for the 290. One account says there were as many as forty.[6] The master of the Hercules admits that there might have been thirty.[7] This was done publicly—so publicly that the United States Consul knew of it, and notified the Collector. The Collector had his orders to seize the 290, and had only to follow the Hercules to get the information which would enable him to obey those orders. He did cause the Hercules to be examined. The Surveyor who did that work *reported to him that there were a number of persons on [377] board, who admitted "that they were a portion of the crew, and were going to join the gun-boat,"[8] and yet he neither stopped the Hercules, nor followed it. In an emergency when, if ever, the telegraph ought to have been employed, he wrote a letter by mail to the Commissioners of Customs at London,[9] which could not be received until the following day. When this letter was received the Commissioners took no notice of the admitted recruitment of men, but ordered inquiries to

[1] Vol. III, page 36.
[2] Adams to Russell, Vol. III, page 536.
[3] Vol. III, pages 35, 36; Vol. VI, page 414.
[4] Semmes says in his Adventures, "Fortunately for the Confederate vessel, tidings of the projected seizure were conveyed to Birkenhead." "Our unceremonious departure was owing to the fact of news being received to the effect that the customs authorities had orders to board and detain us that morning." Vol. IV, page 181.
[5] Vol. III, page 147; Vol. VI, page 437.
[6] Vol. VI, page 408.
[7] Vol. VI, page 411.
[8] Vol. VI, page 409.
[9] Vol. VI, page 410.

be made as to powder and guns.[1] Before these inquiries could be commenced, the offender was at sea.[2] Under the circumstances this hesitation and delay, and the permitting the Alabama to lie unmolested in British waters for over two days, is little short of criminal in the officials who were or should have been cognizant of it.

When the Alabama left Moelfra Bay her crew numbered about ninety men.[3] She ran part way down the Irish Channel, then round the north coast of Ireland, only stopping near the Giant's Causeway. She
[378] then made for Terceira, one of *the Azores, which she reached on the 10th of August.[4]

On the 18th of August, while she was at Terceira, a sail was observed making for the anchorage. It proved to be the "Agrippina of London, Captain McQueen, having on board six guns, with ammunition, coals, stores, &c., for the Alabama." Preparations were immediately made to transfer this important cargo. On the afternoon of the 20th, while employed discharging the bark, the screw-steamer Bahama, Captain Tessier, (the same that had taken the armament to the Florida, whose insurgent ownership and character were well known in Liverpool,) arrived, "having on board Commander Raphael Semmes and officers of the Confederate States steamer Sumter."[5] There were also taken from this steamer two 32-pounders and some stores,[6] which occupied all the remainder of that day and a part of the next.

The 22d and 23d of August were taken up in transferring coal from the Agrippina to the Alabama. It was not until Sunday (the
[379] 24th) that the insurgents' flag was hoisted. Bullock and *those who were not going in the 290 went back to the Bahama, and the Alabama, now first known under that name, went off with "twenty-six officers and eighty-five men."

If it be necessary for the Tribunal to ascertain and determine what was the condition of the Alabama when she left Liverpool on the 29th of July, 1862, the affidavits of various witnesses, printed in the accompanying Volume, (III,) will enable them to do so with accuracy.[7] If any details are wanting, they can easily be supplied from the account which her commander has given of his Adventures Afloat.[8]

It is clear from all these statements that when she left Liverpool she was even more completely fitted out as a man-of-war than the Florida, at the time of her departure. The Tribunal will recall what Captain Hickley, a competent expert, said of that vessel: "*She was in all respects fitted out as a vessel of war of her class* in Her Majesty's Navy." "As she now stands she could, in my professional opinion, be

[1] Vol. IV, page 410.
[2] Vol. IV, page 413.
[3] Vol. III, page 46. Two crew-lists are in the accompanying volumes. One will be found in Vol. III, page 150; the other, in Vol. III, page 213.
[4] Vol. IV, page 182.
[5] Journal of an Officer of the Alabama. See Vol. IV, page 182.
[6] The Bahama cleared from Liverpool on the 12th of August. Fawcett, Preston & Co. shipped on board of her "nineteen cases containing guns, gun-carriages, shot, rammers, &c., weighing in all 158 cwt. 1 qr. 27 lbs. There was no other cargo on board, except five hundred and fifty-two tons of coal for the use of the ship." Vol. III, page 54; see also Vol. III, page 141, for further details.
[7] See particularly Younge's deposition, Vol. III, page 145; Passmore's deposition, Vol. III, page 25; and Latham's deposition, Vol. III, page 211. See also Vol. VI, pages 435 and 472.
[8] I had arrived on Wednesday, [at Terceira,] and on Saturday night we had, by dint of great labor and perseverance, drawn order out of chaos. * * * The ship having been properly prepared, we steamed out on this bright Sunday morning; the flag of the Confederate States was unfurled for the first time from the peak of the Alabama.—*Semmes's Adventures Afloat*, pages 408, 409.

equipped in twenty-four hours for *battle." This is not too strong [380]
language to be used concerning the Alabama. She was, in fact, equipped for battle in little more than twenty-four hours after the Bahama joined her.

It is not necessary, however, to consider this question; for her guilty status at that time is conclusively established against Great Britain.

1st. By the opinion of Mr. Collier, who, soon after giving it, became a member of Her Majesty's Government, under the lead of Lord Palmerston, and with Earl Russell as a colleague. They must, therefore, be held to have adopted his views on one of the most important questions, half legal and half political, that came before Lord Palmerston's Government for determination.

2d. Her Majesty's Government, by ordering the detention of the 290, admitted her illegal character. Earl Russell himself hints that it is not impossible that "the officers of the customs were misled or blinded by the general partiality to the cause of the South known to prevail at Liverpool, and that a *prima facie* case of negligence could be made out."[1]

3d. Earl Russell stated to Mr. Adams in an official note that "it is undoubtedly true that the Alabama was partly fitted out in a British port."[2] *This is all that is necessary to be said in order [381]
to bring it within the operation of the rules of the Treaty of Washington.

Thus constructed, equipped, fitted out, and manned as a ship of war in Liverpool, and armed under the original contract made at the same place with arms and munitions there collected by the contractors of the vessel, but sent out from Great Britain by a separate vessel in order to comply with the official construction of British municipal law, the Alabama commenced a career of destruction which proved highly disastrous to the commerce of the United States.

She was found to be a "fine sailer under canvass," "a quality of inestimable advantage," as it enabled Captain Semmes "to do most of his work under sail."[3] "She carried but an eighteen days' supply of fuel," which induced her commander "to adopt the plan of working under sail in the very beginning," and "to practice it unto the end." "With the exception of a half a dozen prizes, all captures were made with the screw hoisted and ship under sail."[4]

The United States will confine their comments to the official treatment which this vessel received within British jurisdiction. Her history for a *large part of her career may be found in Vol. IV, [382]
between pages 181 and 201. It has also been made the subject of an elaborate volume, from which some short extracts have been quoted above.

From Terceira she crossed to the West Indies, taking at Martinique coal again from the bark Agrippina, which had been sent from England for the purpose;[5] and she passed up thence into the Gulf of Mexico, marking her course by the destruction of vessels of the merchant marine of the United States, and of their war-steamer Hatteras. On the 18th of January, 1862, she arrived at Jamaica. Three British men-of-war were in the harbor, but the promised orders of Earl Russell to detain her for a violation of British sovereignty were not there. In lieu of that, "the

[1] Speeches and dispatches of Earl Russell, Vol. II, pages 259, 260.
[2] Earl Russell to Mr. Adams, Vol. III, page 209.
[3] Semmes's Adventures Afloat, page 419.
[4] Semmes's Adventures Afloat, page 420.
[5] Same, page 514. The Agrippina is the same vessel that took coal and supplies to her at Terceira.

most cordial relations were at once established between the officers of all these ships and of the Alabama,"[1] and the Governor of the island promptly granted Semmes's request to be permitted to repair his ship.[2]

On the 25th of January, having been refitted and furnished with [383] supplies, she left Jamaica, *"bound to the coast of Brazil, and thence to the Cape of Good Hope."[3]

On the 30th of the previous November, after Captain Semmes's mode of carrying on war was known in England, Mr. Adams made to Lord Russell the first of a long series of representations concerning this vessel. This communication contains a summary of all that the United States deem it necessary to say about the Alabama in this place. "It now appears," Mr. Adams says, "from a survey of all the evidence, First. That this vessel was built in a dock-yard belonging to a commercial house in Liverpool, of which the chief member, down to October of last year, is a member of the House of Commons. Secondly That from the manner of her construction, and her peculiar adaptation to war purpose, there could have been no doubt by those engaged in the work, and familiar with such details, that she was intended for other purposes than those of legitimate trade; and, Thirdly, That during the whole process and outfit in the port of Liverpool, the direction of the details, and the engagement of persons to be employed in her, were more or less in hands known to be connected with the insurgents in the United States. It further appears that since her departure from Liver- [384] pool, which she was suffered to leave *without any of the customary evidence at the custom-house to designate her ownership, she has been supplied with her armament, with coals, and stores, and men, by vessels known to be fitted out and dispatched for the purpose from the same port, and that although commanded by Americans in her navigation of the ocean, she is manned almost entirely by English seamen, engaged and forwarded from that port by persons in league with her commander. Furthermore it is shown that this commander, claiming to be an officer acting under legitimate authority, yet is in the constant practice of raising the flag of Great Britain, in order the better to execute his system of ravage and depredation on the high seas. And lastly, it is made clear that he pays no regard whatever to the recognized law of capture of merchant-vessels on the high seas, which requires the action of some judicial tribunal to confirm the rightfulness of the proceedings, but, on the contrary, that he resorts to the piratical system of taking, plundering, and burning private property, without regard to consequences, or responsibility to any legitimate authority whatever."[4]

The course of conduct so forcibly sketched by Mr. Adams was continued by the officers of the Alabama until that vessel was sunk by the Kearsarge off Cherbourg.

[385] *The Alabama went from the West Indies to Bahia, where she met the Georgia. She then crossed to the Cape of Good Hope, and entered Table Bay, as has already been seen.[5] It is not necessary to say again what took place as to the Tuscaloosa; to speak of the

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[1] Semmes's Adventures Afloat, page 555.

[2] *Ibid.* "By the act of consenting to receive the Alabama in Kingston, and permitting her to refit and supply herself at that, we had considered the British Government as having given her a positive recognition, and having assumed the responsibility for the consequences of that sanction."—*Mr. Adams's statement to Lord Russell, described in a dispatch to Mr. Seward*, Vol. III, page 247.

[3] Semmes's Adventures Afloat, page 563.

[4] Vol. III, pages 70, 71.

[5] Ante, page 110.

evident character of the vessel with the captured cargo on board; of the honest indignation of Rear-Admiral Sir Baldwin Walker at the flimsy attempt to convert the prize into a cruiser; of the partiality of the Governor and the Attorney General; of the decision of Her Majesty's Government that she must be regarded as a prize and not as a cruiser; of the reluctant enforcement of the decision of the Government by the Colonial Authorities; or of the reversal of that decision by Her Majesty's Government, when they found that it had been enforced. These facts have all been sufficiently set forth. It only remains to add, that, when Her Majesty's Government had determined to send the instructions to disregard in similar cases such attempts to change the character of a prize, Earl Russell informed Mr. Adams of the fact, and added, "Her Majesty's Government hope that under these instructions nothing will for the future happen to admit of a question being raised as to Her Majesty's orders having been strictly carried out."[1] Earl Russell could *not have anticipated that the first [386] and only attempt of the authorities at Cape Town to carry out those instructions would be disavowed by Her Majesty's Government, and that restoration would be ordered to the insurgents of the only vessel ever seized under them.

From Cape Town the Alabama pushed into the Indian Ocean, and, "within a day or two of six months,"[2] returned again to Cape Town on the 20th of March, 1864. During her absence she had coaled at Singapore, with the consent of the authorities, at the wharf of the Peninsular and Oriental Steamship Company.[3]

On the 21st of March the Alabama began taking on board fresh supplies of coal in Cape Town.[4] The last coal from a British port (and, in fact, the last supply) had been taken on board at Singapore on the 23d day of the previous December.[5] The new supply was allowed to be put on board within three months from the time when the last supply was received in a British port. This was a fresh violation of the duties of Great Britain as a neutral.

On the 25th of March the Alabama "got up steam and moved out of Table Bay for the last *time, amidst lusty cheers and the [387] waving of handkerchiefs from the boats by which they were surrounded."[6] "Military and naval officers, governors, judges, superintendents of boards of trade, attorneys-general, all on their way to their missions in the far East, came to see her."[7]

She now made her way to northern waters, and on the 11th of June, 1864, cast anchor in the harbor of Cherbourg. Her career was now finished. The United States war-steamer Kearsarge was in those waters, and on the 19th of the same June, within sight of Cherbourg, this British-built, British-armed, and British-manned cruiser went down under the fire of American guns.

During her career the Alabama fitted out one tender, the Tuscaloosa. The "Conrad of Philadelphia, from Buenos Ayres to New York, with part of a cargo of wool," was captured on the 20th of June, 1863, in latitude 25° 48′ south.[8] It has already been seen that this prize was

[1] Vol. III, page 203.
[2] Semmes's Adventures Afloat, page 737.
[3] Semmes's Adventures Afloat, page 715.
[4] Semmes's Adventures Afloat, page 744.
[5] This is evident from Semmes's account of his voyage on leaving Singapore, page 715, *et seq.*
[6] Semmes's Adventures Afloat, page 744.
[7] Semmes's Adventures Afloat, page 745.
[8] Semmes's Adventures Afloat, page 627.

taken into the port of Cape Town, under the name of the Tuscaloosa, and under pretense of a commission; and that the pretense was recognized as valid. When the Alabama left to cruise in the Indian Ocean, Semmes "dispatched this vessel from Angra Pequeña back to
[388] the coast of Brazil, to *make a cruise on that coast."[1] It has also been seen how, on her return to Cape Town, she was seized by the Governor of Cape Town, and held until the close of the struggle.

The United States ask the Tribunal of Arbitration, as to the Alabama and as to her tender, to determine and to certify that Great Britain has, by its acts and by its omissions, failed to fulfill its duties set forth in the three rules of the Treaty of Washington, or recognized by the principles of law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty, award a sum in gross to be paid to the United States, they ask that, in considering the amount to be awarded, the losses of the United States, or of individuals, in the destruction of their vessels or their cargoes by the Alabama, or by its tender, and also the expense to which the United States were put in the pursuit of either of those vessels, or in the capture and destruction of the Alabama, may be taken into account.

In addition to the general reasons already stated, they ask this for the following reasons:

1. That the Alabama was constructed, was fitted out, and was equipped within the jurisdiction of Great Britain, with intent to
[389] cruise and carry *on war against the United States, with whom Great Britain was then at peace; that Great Britain had reasonable ground to believe that such was the intent of that vessel, and did not use due diligence to prevent such construction, fitting out, or equipping.

2. That the Alabama was constructed and armed within British jurisdiction. The construction of the vessel and the construction of the arms; the dispatch of the vessel and the dispatch of the arms—all took place at one British port; and the British authorities had such ample notice that they must be assumed to have known all these facts. The whole should be regarded, therefore, as one armed hostile expedition, from a British port, against the United States.

3. That the Alabama, having been specially adapted to warlike use at Liverpool, and being thus intended to cruise and carry on war against the United States, Great Britain did not use due diligence to prevent her departure from its jurisdiction at Liverpool; nor, subsequently, from its jurisdiction at Kingston; nor, subsequently, from its jurisdiction at the Cape of Good Hope; nor, subsequently, from its jurisdiction at Singapore; nor, lastly, from its jurisdiction again at the Cape of Good Hope, as required by the rules of the Treaty of Washington.

[390] *4. That Great Britain did not, as Earl Russell had promised, send out orders for her detention.

5. That the Alabama received excessive hospitalities at Cape Town on her last visit, in being allowed to coal before three months had expired after her coaling at Singapore, a British port.

6. That the responsibility for the acts of the Alabama carries with it responsibility for the acts of her tender.

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[1] Semmes's Adventures Afloat, page 738.

THE RETRIBUTION.

The Retribution.

The steam-propeller Uncle Ben, built at Buffalo, in New York, in 1856, was sent to the southern coast of the United States just prior to the attack on Fort Sumter. Entering Cape Fear River in stress of weather, she was seized by the insurgents. Her machinery was taken out, and she was converted into a schooner, and cruised, under the name of the Retribution, about the Bahama Banks. On the 19th day of December, 1862, she captured, near the island of San Domingo, the United States schooner Hanover, and took the prize to Long Cay, (Fortune Island,) Bahamas, and there sold the cargo, "without previous judicial process."[1] Representations being made of these facts, an answer was made by the Colonial Authorities, *claiming that they were deceived, and that they supposed that [391] the person making the sale was the master of the vessel.[2] Mr. Seward replied that this answer was not "deemed altogether conclusive." Subsequently one Vernon Locke was represented as the person who had, "by fraudulent personations and representations, procured the admission of that vessel [the Hanover] to entry at the Revenue Office and effected the sale of her cargo there."[3] Locke was indicted, and bail accepted in the sum of £200. The United States are not aware that he was ever brought to trial. Mr. Seward thought the bail "surprisingly small and insignificant."[3] On the 19th of February, 1863, when off Castle Island, one of the Bahamas, she captured the American brig Emily Fisher, freighted with sugar and molasses. This prize also "was taken to Long Cay, one of the Bahama Islands, and notwithstanding the protest of Captain Staples, [the master,] and in the presence of a British magistrate, was despoiled of her cargo; a portion of which was landed, and the balance willfully destroyed."[4] The Retribution then went to the harbor of Nassau, where she was sold, assuming the name of the Etta.[4]

*The United States, with confidence, ask the Tribunal to find [392] and certify as to this vessel, that Great Britain failed to fulfill the duties set forth in the three rules of Article VI of the Treaty, or recognized by the principles of International Law not inconsistent with such rules. They ask this, not only for the general reasons heretofore mentioned as to this class of vessels, but because, in the case of each of the captured vessels above named, the acts complained of were done within Her Majesty's jurisdiction.

THE GEORGIA.

The Georgia.

The Georgia was built for the insurgents at Dumbarton, below Clyde, on the Glasgow. She was launched on the 10th day of January, 1863, at which time, as has already been said, "a Miss North, daughter of a Captain North, of one of the Confederate States, officiated as priestess, and christened the craft Virginia."[5] It was no-

[1] Mr. Seward to Lord Lyons, Vol. I, page 701.
[2] Burnside to Nesbitt, Vol. I, page 702.
[3] Governor Bayley to Duke of Newcastle, Vol. I, page 706.
[4] Affidavit of Thomas Sampson, Vol. VI, page 736.
[5] Underwood to Seward, January 16, 1863, Vol. VI, page 593.

torious that she was being constructed for this service.[1] When finished she was a "screw-steamer of about five hundred tons register, clipper-built; figure-head, fiddle-bow; short thick funnel; with
[393] *a number of compartments forward on both sides, from eight to ten feet square, and stronger than a jail, strong doors to them, with hinges about three inches thick, and brass padlocks accordingly, and a strong magazine forward in the bow." On Friday, the 27th of March, she left for Greenock.[2] By this time she had parted with her name Virginia, and had the name Japan, "written in small letters on her bow;" and it was pretended that her voyage was to be to China.

On the evening of Monday, the 30th of March, some seventy or eighty men who had been shipped at Liverpool for this vessel were sent to Greenock. The agreements with this crew were made by the house of Jones & Co., of Liverpool,[3] who advanced money to them."[4] The vessel was registered in the name of Thomas Bold, of Liverpool, a member of the house of Jones & Co., and a near connection of Maury, who afterward commanded her. It remained registered in his name until the 23d day of the following June.[5] When the men arrived in the Clyde from Liverpool, the Japan was "lying in the river opposite Greenock, and they were taken on board in a tug. On
[394] the *morning of the 2d of April they ran out toward the sea, but returned in the afternoon, and remained near the light-house down the Clyde, taking on board more men and provision from Greenock. They started again, and next morning they were off Castleton, Isle of Man.[6] Here they changed their course, and went into the Atlantic, through the northern passage, between Ireland, and Scotland. On the 6th of April they reached the coast of France. Ushant light was the first place they sighted. Here they turned their steps toward St. Malo, proceeding under slow steam, and in the morning they sighted, off Morleaux,[7] the steamer Alar, with arms, ammunition, and supplies for the Georgia, under charge of Jones, a partner in the Liverpool house of Jones & Co.[8]

It happened that these proceedings were afterward made the subject of judicial investigation before Sir Alexander Cockburn, Lord Chief Justice of England. Highatt and Jones, two of the members of the firm of Jones & Co., were indicted at Liverpool, for a violation of the Foreign Enlistment Act of 1819, in causing these men to be enlisted to serve in a war against the United States. The case came on for trial
[395] at the Liverpool Assizes, in *August, 1864. In his address to the jury, after the evidence was in, the Lord Chief Justice said: "There was no doubt that Matthews, Stanley, and Glassbrook did enter themselves and enlist on board the steamer, which was immediately afterward employed as a war-steamer in the Confederate service, for the purpose of waging war against the Northern States of America; and there seemed to be very little doubt that both the defendants had to do with the men's leaving the port of Liverpool, for the purpose of joining the Japan, afterward called the Georgia. * * * Now came the question, whether the defendants had procured the men to be engaged

[1] Extracts from London Daily News, February 12 and 17, 1863, Vol. VI, page 503, *et seq.*
[2] Dudley to Seward, Vol. II, page 665; Vol. VI, page 509.
[3] Vol. II, page 681; Vol. VI, page 516; Vol. VII, page 88.
[4] Vol. II, page 672; Vol. VI, page 512; Vol. VII, page 88.
[5] Mr. Adams to Earl Russell, Vol. II, pages 677, 678; Vol. VII, page 88.
[6] Mahon's affidavit, Vol. II, page 673; Vol. VI, page 513.
[7] Thompson's affidavit, Vol. II, page 671; Vol. VI, page 511.
[8] Speech of Thomas Baring, Esq., M. P., Hansard, 3d series, Vol. 175, page 467.

in war against a country toward which this country was bound to maintain a strict neutrality. No doubt it was possible that the defendants might have been under a delusion that the ship was engaged for a voyage to China. It was for the jury to say whether they believed that to have been the case. If they believed the witnesses Conolly and Glassbrook, the defendant Jones could not have been of that opinion, because he was on board the small steamer which was an important agent in the transaction; and when he found out what the vessel really was, he manifested no surprise or horror. It was true that the jury had to rely on the evidence of men who had turned *traitors [396] to the people they had sworn to serve, and who had since played the spy upon the persons who, as they alleged, had engaged them. But, on the other hand, there was no attempt to show them that, on the day when these men signed articles at Brest, Mr. Jones was not on board, and if he was on board it was difficult to suppose he could have got there with the innocent intention described by the defense. It seems strange that if they were acting as agents for Mr. Bold, they did not now call upon him to come into court, and state that they were innocently employed, and perfectly unconscious that the vessel was intended to go on a warlike expedition. Although sometimes it was an inconvenience and a hardship that a man, charged as the defendants were, could not be called to give his own evidence, sometimes it was a vast convenience to persons accused that they could not be called, because if they were, they would be constrained to admit, unless they committed perjury, that the truth was on the other side."[1]

The Alar, with her cargo, had cleared at Newhaven for St. Malo. When the two vessels met, the Georgia took the Alar in tow, and they floated about on those waters during the whole day. At night they came to anchor, probably off the island *of Ushant, and the [397] Georgia commenced taking in arms and ammunition and supplies. Three days passed in this way. There were nine breech-loading guns to be mounted on decks, and "guns, shot, shells, rockets, ammunition, rifles, cutlasses, and all sorts of implements of war."[2]

All were put on board before Friday, the 10th of April; the insurgents' flag was then hoisted; Maury, the insurgent officer destined for the command, produced his commission; the Japan was changed into the Georgia; fifteen sailors who refused to cruise in her were transferred to the Alar, and the Georgia continued her cruise.

On the 8th of April Mr. Adams called Earl Russell's attention to the departure from the Clyde and Newhaven of this hostile expedition, "with intent to depredate on the commerce of the United States,"[3] and he stated his belief that the destination of the vessel was the island of Alderney. Earl Russell replied, on the same day, that copies of his letter "were sent, without loss of time, to the Home Department and to the Board of Treasury, with a request that an immediate inquiry might be made into the circumstances stated in it, and that if the result should prove the suspicions to be well founded, *the most effective measures* [398] *might be *taken which the law admits of for defeating any such attempts to fit out a belligerent vessel from a British port.*"[4]

Had Her Majesty's Government taken the measures which Earl Russell suggested, it is probable that the complaints of the United States, as to this vessel, might not have been necessary. The sailing and the

[1] Vol. VI, page 567.
[2] Vol. II, page 671; Vol. VI, page 511.
[3] Vol. II, page 666; Vol. VI, page 509.
[4] Vol. II, page 667; Vol. VI, page 510.

destination of the Japan were so notorious as to be the subject of newspaper comment.[1] No time, therefore, was required for that investigation. It could have been very little trouble to ascertain the facts as to the Alar. The answer to a telegram could have been obtained in a few minutes. Men-of-war might have been dispatched on the 8th from Portsmouth and Plymouth, to seize both these violators of British sovereignty. In doing this Her Majesty's Government need only have exercised the same powers which were used against General Saldanha's expedition, arrested at Terceira in 1827, and whose use in that case was sustained by a vote of both Houses of Parliament.[2] The island of Alderney and the other Channel islands were on the route to St. Malo and Brest, and it is not at all probable, scarcely possible, that the
[399] Alar and the Georgia *would not have been discovered. The purposes of the latter vessel, thus taken *flagrante delicto*, would then have been exposed.

This was not done. Instead of directing *action* to be taken by the *Navy*, Lord Russell caused *inquiries* to be made by the *Home* Office and the *Treasury*, and the Georgia escaped.

On the 1st of December, 1863, Mr. Adams called Lord Russell's attention to the fact of "the existence of a regular office in the port of Liverpool for the enlistment and payment of British subjects, for the purpose of carrying on war against the Government and people of the United States;" and he expressed the hope that "the extraordinary character of these proceedings, as well as the hazardous consequence to the future peace of all nations of permitting them to gain any authority under the international law, will not fail to fix the attention of Her Majesty's Government."[3] The depositions inclosed in this communication furnished conclusive proof that the members of the firm of Jones & Co. were still engaged at Liverpool in procuring and shipping men for the Georgia, and that the payments of the wages of the crew of that vessel were regularly made through the same firm.[4] It was also proved
[400] that Jones had *superintended the shipping of the armament of the Georgia off Brest; that he had been standing by the side of Maury when he assumed command, and that he had told the men, as an inducement to them to remain, that "of course they would get the prize money."[5]

On the 11th of January, 1864, Mr. Adams inclosed to Lord Russell copies of papers which he maintained went "most clearly to establish the proof of the agency of Messrs. Jones & Co. in enlisting and paying British subjects in this Kingdom to carry on war against the United States."[6] Proceedings were taked against Jones & Highatt, as has already been shown. They were convicted, and were fined but fifty pounds each—manifestly a punishment not calculated to deter them from a repetition of the offense.[7]

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[1] Vol. II, page 668.

[2] Hansard, new series, Vols. XXIII and XXIV; Annual Register, History, &c., A. D. 1829, Vol. LXXII, page 187.

[3] Vol. II, page 682; Vol. VI, page 519.

[4] Vol, II, pages 683, 684, 686, 689, &c.

[5] Stanley's affidavit, Vol. II, page 684; Vol. VI, page 522. See also Charles Thompson's affidavit, Vol. III, page 87.

[6] Vol. II, page 698; Vol. VI, page 534.

[7] "Five prosecutions were instituted at different times against persons charged with having enlisted or engaged men for the naval service of the Confederate States. Of these, three were successful. Five of the accused were convicted or pleaded guilty. * * * No prosecution appears to have been instituted against Bullock himself." (*Bernard's Neutrality*, pages 361–2.) This is a terribly small record, considering the magnitude of the offenses committed, and considering the zeal shown in repressing en-

After all this information was before Lord Rus*sell, the Geor- [401]
gia, on the 1st day of May, 1864, reappeared in the port of Liverpool. During her absence she had been busy in destroying such of the commerce of the United States in the Atlantic as had escaped the depredations of the Florida and the Alabama. She had been to the Western Islands, and from thence to the Brazilian port of Bahia. From thence she went to the Cape of Good Hope. On the way she fell in with the Constitution, a merchant-vessel of the United States, laden with coal. "We filled our vessel with coal from her," says one of the witnesses. In a few days after that she entered Simon's Bay, Cape of Good Hope. There she staid a fortnight, having repairs done and getting more coal. She left Simon's Bay on the 29th of August. It is not probable that the supply from the Constitution was exhausted at that time.[1] She then worked her way to Cherbourg, and in a short time after came again into the port of Liverpool. Her career and character were rapidly but forcibly sketched by Thomas Baring, Esq., in a speech in the House of Commons on the 13th of May, 1864. He said: "At the time of her departure the Georgia was registered as the property of a Liverpool merchant, a partner of the firm which shipped the crew. She remained the property of *this person until the 23d of June, when the register [402]
was canceled, he notifying the Collector of her sale to foreign owners. During this period, namely, from the 1st of April to the 23d of June, the Georgia being still registered in the name of a Liverpool merchant, and thus his property, was carrying on war against the United States, with whom we were in alliance. It was while still a British vessel that she captured and burned the Dictator, and captured and released, under bond, the Griswold, the same vessel which had brought corn to the Lancashire sufferers. The crew of the Georgia were paid through the same Liverpool firm. A copy of an advance note used is to be found in the Diplomatic Correspondence. The same firm continued to act in this capacity throughout the cruise of the Georgia. After cruising in the Atlantic, and burning and bonding a number of vessels, the Georgia made for Cherbourg, where she arrived on the 28th of October. There was, at the time, much discontent among the crew; many deserted, leave of absence was given to others, and their wages were paid all along by the same Liverpool firm. In order to get the Georgia to sea again, the Liverpool firm enlisted in Liverpool some twenty seamen, and sent them to Brest. The Georgia left Cherbourg on a second cruise, but having no success she returned to that *port, [403]
and thence to Liverpool, where her crew have been paid off without any concealment, and the vessel is now laid up. Here, then, is the case of a vessel, clandestinely built, fraudulently leaving the port of her construction, taking Englishmen on board as her crew, and waging war against the United States, an ally of ours, without once having entered a port of the power the commission of which she bears, but being, for some time, the property of an English subject. She has now returned to Liverpool—and has returned, I am told, with a British crew on board, who, having enlisted in war against an ally of ours, have committed a misdemeanor in the sight of the law."[2]

The Attorney General, Sir Roundell Palmer, replied on behalf of the

listments for the service of the United States. (*See Vol. IV, page* 547, *and Vol. IV, page* 540.) It is to be observed, too, that Mr. Adams furnished Lord Russell with evidence to sustain a prosecution against Bullock. (*Mr. Adams to Earl Russell, March* 30, 1865. *Vol, III, page* 130.)

[1] See the affidavits in Vol. II, page 684, *et seq.*

[2] Hansard, third series, Vol. 175, page 467; Vol. V, page 577.

Government to this speech. He did not seriously dispute the facts as stated by Mr. Baring. "The whole of the honorable gentleman's argument," he said, "assumes that the facts, and the law applicable to the facts, are substantiated, that we are in a position, as between ourselves and the Confederates, to treat the matter as beyond controversy, and to assume that the Georgia was, in fact, fitted out in violation of our neutrality. Now we may have very strong reason to suspect this, and
[404] may even believe it to be true; but to say *that we are to act upon strong suspicion or belief against another state, upon certain facts which have never been judicially established, and which it is not easy to bring to the test as between Government and Government, that is a proposition which is not without grave consideration to be accepted."[1] He found a defense for the irresolution and inactivity of the Government, in the fact that the United States were unwilling to abandon their claims for compensation for the losses by the acts of the Alabama. "I have no hesitation," he said, "in saying that the United States by advancing such demands, and by seeking to make our Government responsible for pecuniary compensation for prizes taken by the Alabama upon the high seas, and never brought within our ports or in any way whatever under our control, are making demands directly contrary to the principles of International Law laid down by their own jurists, and thereby they render it infinitely more difficult for us at their request to do anything resting on our own discretion."[2]

When it was apparent that the Georgia was to be allowed to remain in Liverpool, and that she was not to be made *subject to the rules of January 31, 1862, Mr. Adams addressed a note to Lord Russell
[405] in which he said: "I learn that she is *about to remain for an indefinite period, the men having been discharged. I scarcely need to suggest to your Lordship that it has become a matter of interest to my Government to learn whether this vessel assumes the right to remain in virtue of her former character, or, if received in a later one, why she is permitted to overstay the period of time specified by the terms of Her Majesty's Proclamation. * * I cannot but infer, from the course previously adopted toward the armed vessels of the United States, that any such proceeding, if taken by one of them, would have been attended by an early request from your Lordship to myself for an explanation."[3]

Having received no answer to these questions, Mr. Adams, on the 7th of June, 1864, informed Lord Russell that he had received from the Consul of the United States, at Liverpool, information that a transfer purporting to be a sale had been made of the Georgia by the insurgents or their agents at Liverpool, and on behalf of the Government of the United States he "declined to recognize the validity of the sale."[4]

While Mr. Adams was vainly endeavoring to ascertain from Lord Russell whether the Georgia entered the port of Liverpool as a
[406] merchant-ship *or as a man-of-war, that vessel went into dock at Birkenhead and had her bottom cleaned and her engines overhauled.[5] The insurgent agents went through the form of selling her to a person who was supposed to be in collusion with them. All this was communicated to Earl Russell by Mr. Adams.[6] Lord Russell, in his

[1] Hansard, 3d series, Vol. CLXXV, pages 484–5.
[2] Same, page 488.
[3] Vol. II, page 703; Vol. VI, page 538.
[4] Vol. II, page 710; Vol. VI, page 543.
[5] Wilding to Seward, Vol. II, page 711; Vol. VI, page 543.
[6] Vol. II, page 713; Vol. VI, page 545.

reply to these notes, took no notice of Mr. Adams's protest against the validity of the sale, or of his inquiries as to the character the vessel enjoyed in the port of Liverpool. He said that the evidence failed to satisfy him that the steamer Georgia would be again used for belligerent purposes; and he added that, "with a view to prevent the recurrence of any question such as that which has arisen in the case of the Georgia, Her Majesty's Government have given directions that in future no ship of war, of either belligerent, shall be allowed to be brought into any of Her Majesty's ports for the purpose of being dismantled or sold."[1]

This terminated the discussion on the questions raised by Mr. Adams. A few days later, the career of the Georgia itself was terminated by its capture by the United States vessel of war Niagara.

The United States ask the Tribunal of Arbitration to also certify as to this vessel, that Great Brit*ain has, by its acts and [407] omissions, failed to fulfill the duties set forth in the three rules of the sixth article of the Treaty, or recognized by the principles of International Law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by Article VII of the Treaty, to award a sum in gross to be paid to the United States, they ask that, in considering the amount to be awarded, the losses of the United States and of individuals, and the expense to which the United States were put in the pursuit and capture of the Georgia, may be taken into account.

They ask this, in addition to the general reasons already assigned, for the following reasons applicable to this particular vessel:

1. That, though nominally cruising under the insurgent flag, and under the direction of an insurgent officer, the Georgia was essentially a British vessel. The evidence on this point cannot be better stated than in the words to which Mr. Thomas Baring gave the great weight of his name in the House of Commons. When she returned to Liverpool, in May, 1864, she was received as a British vessel. Mr. Adams's inquiries of Earl Russell failed to elicit a response that she was not. No steps were taken against her or against the parties concerned in fitting her out, equipping and arming her, or against any one concerned in the destruction of the *commerce of the United States, with the [408] exception of the proceedings as to enlistments. The United States insist that by reason of the origin and history of the vessel, and by reason of this negligence of Her Majesty's Government, Great Britain became justly liable to the United States for the injuries done by this vessel.

2. Great Britain did not use due diligence to prevent the fitting out and equipping of the Georgia within its jurisdiction. It was notorious that she was being constructed for use under the insurgent flag. *(See the extract from the News, and Underwood's dispatch.)* Her fittings were of such a nature and character as to have afforded of themselves a reasonable ground to believe that she was intended to cruise or to carry on war; and her destination rendered it certain that that war was to be carried on against the United States. It was therefore the duty of Great Britain to prevent her departure from the Clyde.

3. It was the duty of Her Majesty's Government, on the receipt of Mr. Adams's note of the 8th of April, to take the most effectual measures which the law admitted of for defeating the attempt to fit out the Georgia from a British port. Lord Russell admitted this measure of duty in his reply to Mr. Adams's note. The most effectual, and in fact the only effectual remedy, was not *taken, so far as known to the United States. [409]

[1] Earl Russell to Mr. Adams, Vol. II, page 719; Vol. VI, page 550.

Vessels of war dispatched from Plymouth and Portsmouth, immediately on the receipt of Mr. Adams's note, into the waters about Brest and the Channel Islands, would have afforded a complete remedy. This was a measure sanctioned by British precedent and by British law. [*See the Terceira case, above cited.*] The failure to adopt that "effectual measure," taken in connection with the original fitting out and equipping of the Georgia, in the Clyde, and with the arming her through the Alar, at Newhaven, constitute a violation of the duties of Great Britain as a neutral toward the United States, which entails upon it the obligation to make full compensation for the injuries caused by the acts of the Georgia.

4. When the Georgia arrived at Cape Town, Great Britain failed to detain her. This was a violation of the duties of a neutral as set forth in the second clause of the first rule of the Treaty of Washington.

THE TALLAHASSEE, OR THE OLUSTEE.

The Tallahassee or Olustee.

The Tallahassee was "a British steamer fitted out from London to play the part of a privateer out of Wilmington."[1] She was [410] originally called the *Atlanta.[2] Under that name she arrived in Bermuda from England on the 18th day of April, 1864. She made two trips as a blockade-runner between there and Wilmington, and then went out for a cruise as a vessel of war. Her captures were principally made under the name of the Tallahassee. Some were made under the name of the Olustee. It is not quite clear whether she made two trips, one under each name, or whether the name was changed in one trip, in order to blind the pursuers.[3] On the 19th of August, 1864, she arrived in Halifax, after destroying several vessels near Cape Sable. The Consul of the United States at Halifax reported her as "about six hundred tons burden," "an iron double-screw steamer," having "about one hundred and twenty men."[4] He also said that the insurgents had established a coal depot there. On arrival, the officer in command called upon the Admiral and Lieutenant Governor. He gives the following account of what took place: "My reception by the first [the Admiral] was very cold and uncivil; that of the Governor less so. I stated that I was in want of coal, and that as soon as I could fill up I would go to sea; that it would take from two to three days. No [411] objection was made at the *time—if there had been I was prepared to demand forty-eight hours for repairs. The Governor asked me to call next day, and let him know how I was progressing, and when I would leave. I did so, and then was told that he was surprised that I was still in port; that we must leave at once; that we could leave the harbor with only one hundred tons of coal on board. I protested against this, as being utterly insufficient. He replied that the Admiral had reported that quantity sufficient (and in such matters he must be governed by his statement) to run the ship to Wilmington. The Admiral had obtained this information by sending on board three of his officers, ostensibly to look at our machinery and the twin-screw, a new system, but really *to ascertain the quantity of coal on board, that burned daily, &c.* * * I am under many obligations to our agent, Mr.

[1] Mr. Adams to Earl Russell, Vol. I, page 709: See Vol. VI, page 728.
[2] Morse to Seward, Vol. VI, page 727.
[3] Boreham's affidavit, Vol. VI, page 732.
[4] Mr. Jackson to Mr. Seward, 19th August, 1864, Vol. VI, page 728.

Weir, for transacting our business, and through his management about one hundred and twenty tons of coal were put aboard instead of half that quantity. * * Had I procured the coal needed I intended to have struck the coast at the capes of the Delaware, and followed it down to Cape Fear, but I had only coal enough to reach Wilmington on the night of the 25th."[1]

Had the British authorities at Nassau, Bermuda, *Barbadoes, [412]
Cape Town, Melbourne, and other colonial ports, pursued the same course that the Lieutenant Governor at Halifax did, under the wise advice of the Admiral, the grievances of the United States would have been much less, and this case would have been shorter by many pages. The first time that the rule of January 31st, 1862, as to the supply of coal, was fairly carried out, the operations of the insurgent cruiser, to which it was applied, were arrested on the spot, and the vessel was obliged to run for a home port.

The Tallahassee apparently remained in Wilmington for some months. On the 13th of January, 1865, she arrived in Bermuda again, under the name of the Chameleon. On the 19th she sailed again, taking a cargo to Liverpool, where at the close of the war she was claimed by the United States.

From the fact that she was fitted out in London to be used as a privateer from Wilmington, and that she did go out from Wilmington with what purported to be a commission from the insurgent authorities, and did prey upon the commerce of the United States, and for the reasons already given, the United States ask the Tribunal to find and certify as to this vessel as they have been asked to find and certify as to the Sumter and the Nashville, the Florida and the Alabama, and the Georgia.

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*THE CHICKAMAUGA. [413]

The Chickamauga.

Among the new British-built blockade-runners reported by the United States Consul at Liverpool on the 5th of March, 1864, was "the Edith, new double-screw; two pole-masts; forecastle raised one foot higher than bulwark; two funnels; marked to draw nine feet forward and ten aft; no figure-head."[2] She arrived at Bermuda from England, on the 7th day of April, 1864. On the 23d of the following June she sailed for Wilmington, and on the 7th of the next July arrived from there with cotton. On the 23d of July she again went to Wilmington.

The Edith was one of that class of blockade-runners, like the Tallahassee, which was owned by the insurgent authorities. In the year 1864 other parties as well as the insurgent authorities were largely engaged in the business of running cotton out of the blockaded ports. Thus, in the quarter in which the Edith left Liverpool, 34,754 bales of cotton were imported into Liverpool from the Southern States, via Bermuda, Nassau, Havana, and Matamoras, of which only 7,874 were consigned to Fraser, Trenholm & Co."[3] The Edith, however, was a vessel be- [414]
longing to the *so-called government at Richmond, and, being found to be fast, and adapted for the sort of war that was carried

[1] Wood to Mallory, 31st August, 1864, Vol. VI, page 729.
[2] Manuscripts in Department of State; see Vol. VI, pages 723–4–5.
[3] Dudley to Seward, 1st April, 1864. Only 697 bales came by way of Havana.

on against the commerce of the United States, it was determined to put her in commission as a man-of-war.

The attention of the Tribunal of Arbitration is invited to the facile manner in which these vessels were permitted to adapt themselves to circumstances. The Sumter cruised as a man-of-war, and received hospitalities as such. She was allowed to change her character in a British port, and then to sail under the British flag as a blockade-runner, owned and operated by the insurgents. The same thing would undoubtedly have been done with the Georgia had she not been captured by the Niagara. The Atlanta started her career as a blockade-runner, owned by the insurgents; she was converted into a man-of-war under the name of the Tallahassee. When unable to pursue further her work of destruction, she became again a carrier for the benefit of the insurgents, and was accepted by Great Britain in her new character. The Edith was now to go through similar transformations.

On the 17th of September she was in commission as a man-of-war. Between that date and the 28th of October she took on board large
[415] supplies of coal from blockade-runners. On the 28th *of October, having waited for a month for a night dark enough to run the blockade, she put to sea from Wilmington, and ran northward toward Long Island. On the 30th she destroyed the bark Mark L. Potter, of Bangor, Maine; on the 31st, the Emily L. Hall, the Shooting Star, the Goodspeed, and the Otter Roch, all vessels under the flag of the United States; on the 2d of November, the bark Speedwell, also a vessel of the United States; and on the 7th of November she reached Bermuda. On the 8th of November she was allowed to come into the harbor, and permission was given for a stay of five days for repairs, and also to take on board twenty-five tons of coal, although she had at that time one hundred tons in her bunkers. She actually staid seven days, and took on board eighty-two tons.[1] On the 15th of November she sailed from Bermuda, and on the 19th arrived at Wilmington.

For the reason already given the United States ask the Tribunal, as to this vessel, to find and certify as they have been asked to find and certify as to the Sumter, the Nashville, the Florida, the Alabama, the Georgia, and the Tallahassee.

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*THE SHENANDOAH.

The Shenandoah.

The British steamer Sea King, a merchant-vessel which had belonged to a Bombay Company, and had been employed in the East India trade,[2] was "a long rakish vessel of seven hundred and ninety tons register, with an auxiliary engine of two hundred and twenty nominal horse-power, with which she was capable of steaming ten knots an hour. She was the handiwork of celebrated builders on the river Clyde, in Scotland, and had made one voyage to New Zealand as a transport for British troops, when she proved herself one of the fastest vessels afloat, her log showing at times over three hundred and twenty miles in twenty-four hours."[3]

In the year 1863, before the voyage to New Zealand, Mr. Dudley had seen her at Glasgow, and had reported her as a most likely steamer for the purposes of a privateer.[4]

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[1] Manuscript dairy in the Department of State.
[2] Bernard's British Neutralty, page 359.
[3] Cruise of the Shenandoah, page 9.
[4] Dudley to Seward and Morse to Seward, Vol. VI, page 555.

On the 20th September, in the year 1864, she was sold in London to Richard Wright, of Liverpool, a British subject, and the father-in-law of Mr. Prioleau, of South Carolina, the managing partner in the house of Fraser, Trenholm & Co.,[1] and the transfer was registered the same day.

*The United States assert that the notorious connection of the [417
firm of Fraser, Trenholm & Co. with the insurgents, and their repeated violations of the sovereignty of Great Britain in purchasing, constructing, equipping, arming, and contracting for vessels of war to be used in carrying on hostilities against the United States, ought by that time to have made them objects of suspicion to every British official, connected with the construction of the transfer of steamers capable of being adapted to warlike use. The acquisition, by a near connection of a member of their firm, of a fast-going steamer, capable of being so converted, and the proposition to send her to sea in ballast, with nothing on board but two mounted guns and a supply of provisions and coal, ought of itself to have attracted the attention of the British officials. The omission to take notice of the fact is a proof of want of the due diligence required by the Treaty. Under the circumstances, it would have been the exercise of but the most ordinary diligence to supervise the transfers of this class of vessels in the Government records, and to follow up so palpable a clew as was given in the case of the Sea King.

On the 7th of October, Wright gave a power of attorney to one Corbett to "sell her at any time within six months for a sum not less than £45,000 *sterling."[2] Corbett was an Englishman who had [418
commanded the Douglas, afterward known as the Margaret and Jessie, one of the kaleidoscopic blockade-runners owned by the insurgents and carrying the British flag.

The next day the Sea King cleared for Bombay, and sailed "with a crew of forty-seven men."[3] Before sailing, while she "lay in the basin," she "took in coal and provisions sufficient for a twelve-months' cruise." She "had two 18-pounders mounted on the decks," which were the guns generally used in bringing vessels to.[4] "She was scarcely clear of the ground when a telegram was flashed to Liverpool, advising the Confederate agent at that port" that she had sailed;[5] and about 8 or 9 o'clock that evening a screw-steamer, called the Laurel, "nearly new-built, very strong, and admirably adapted for a privateer,"[6] left Liverpool, clearing for Matamoras, via Nassau, taking a "score or more of natives of the South, who had staked life and fortune on the hazard of a desperate game," among whom were "several old Confederate States navy officers, who had served on board the Sumter, *Alabama, and [419
Georgia."[7] The Laurel took out as cargo "cases marked as machinery, but in reality contained guns and gun-carriages, such as are used in war vessels."[8] Mr. Dudley, the Consul at Liverpool, from the number of guns and the number of men, drew the correct conclusion that they were shipped in order to be transferred to some other vessel. The officers in Her Majesty's service, by the exercise of due diligence,

[1] Dudley to Seward, Vol. III, page 319; Vol. VI, page 660.
[2] Dudley to Seward, Vol. III, page 319.
[3] Dudley to Seward, Vol. III, page 319; Vol. VI, page 560.
[4] Cruise of the Shenandoah, page 10.
[5] Temple's affidavit, Vol. III, page 478; Vol. VI, page 709.
[6] Cruise of the Shenandoah, page 11.
[7] Dudley to Adams, Vol. III, page 316; Vol. VI, page 556.
[8] Cruise of the Shenandoah, page 16. See also Vol. III, page 318.
[9] Dudley to Seward, Vol. III, page 317; Vol. VI, page 556.
[10] Dudley to Seward, Vol. III, page 318; Vol. VI, page 557.

might have arrived at the same conclusion, and might have detained both ships.

The appointed place of meeting was the harbor of Funchal, in the island of Madeira. The Laurel arrived there two days in advance of the Sea King.[1] The latter vessel had enlisted its crew "for a voyage to Bombay or any port of the Indian Ocean, China Seas, or Japan, for a term not to exceed two years."[2] She "went down the English Channel under steam and sail, and when off Land's End she was put under reefed canvas," and so continued to Madeira. She was fully rigged for sailing, and her steam was intended only as an auxiliary.

[120] The Sea King arrived off Funchal the night of *the 19th.[3] The Laurel, on the morning of the 20th, came out to meet her, "with a full head of steam on;" signaled her to round the Desertas, a barren rocky island lying near Madeira; and proceeded to the place of rendezvous, the Sea King following in the wake.[4]

"Tackles were at once got aloft on both vessels, and they commenced operations by first transferring from the Laurel to the Sea King the heavy guns." "At the expiration of thirty-six hours the transfer was effected, and the munitions of war, clothing, and stores, with which the Laurel had been laden, were piled in utter confusion on the decks and in the hold of the Sea King, which was to bear that name no more."[5] They "took in from the Laurel eight cannon, viz, six large and two small, with their carriages, (the guns were called 68-pounders;) a quantity of powder, muskets, pistols, shot and shell; clothing, and a quantity of other stores, and also a quantity of coals."[6]

Corbett then came forward and announced a pretended sale of the vessel, (the real sale having taken place in London,) and tried to induce the men who had enlisted to sail in the Sea King to continue

[121] their contract in the Shenandoah. The *conduct of this person was so palpably a violation of the Foreign Enlistment Act that the British Consul at Funchal sent him home as a prisoner, accompanied by depositions to prove his guilt.[7] Captain Waddell, the new commander in the place of Corbett, made a speech, "which was received with but little enthusiasm from the majority of those who listened to him."[8] "Out of eighty twenty-three only cast in their lots with the new cruiser."[9] When the Shenandoah left the Laurel her "officers and crew only numbered forty-two souls, less than half her regular complement."[10] This obliged her "to depend upon her auxiliary engine."

When the news of these proceedings was fully known in London, Mr. Adams brought the subject to the notice of Earl Russell.[11] In a subsequent note he referred to this fact in the following language:[12]

"On the 18th of November, 1864, I had the honor to transmit to your Lordship certain evidence which went to show that on the 8th of October preceding a steamer had been dispatched, under the

[122] British flag, from London, called the *Sea King, with a view to

[1] Cruise of the Shenandoah, page 19.
[2] Ellison's affidavit, Vol. III, page 359; Vol. VI, page 580.
[3] Harris's affidavit, Vol. III, page 363; Vol. VI, page 584.
[4] Cruise of the Shenandoah, pages 19, 20.
[5] Cruise of the Shenandoah, page 21.
[6] Vol. III, page 363; Vol. VI, page 580. See also the other affidavits which follow this.
[7] Vol. VI, page 572.
[8] Cruise of the Shenandoah, page 22.
[9] Cruise of the Shenandoah, page 23.
[10] Cruise of the Shenandoah, page 24.
[11] Adams to Russell, Vol. III, page 323
[12] Same to same, Vol. III, page 377.

meet another steamer, called the Laurel, likewise bearing that flag, dispatched from Liverpool on the 9th of the same month, at some point near the island of Madeira. These vessels were at the time of sailing equipped and manned by British subjects; yet they were sent out with arms, munitions of war, supplies, officers, and enlisted men, for the purpose of initiating a hostile enterprise to the people of the United States, with whom Great Britain was at the time under solemn obligations to preserve the peace.

"It further appears that, on or about the 18th of the same month, these vessels met at the place agreed upon, and there the British commander of the Sea King made a private transfer of the vessel to a person of whom he then declared to the crew his knowledge that he was about to embark on an expedition of the kind described. Thus knowing its nature, he nevertheless went on to urge these seamen, being British subjects themselves, to enlist as members of it.

"It is also clear that a transfer then took place from the British bark Laurel of the arms of every kind with which she was laden, for this same object; and lastly, of a number of persons, some calling themselves officers, who had been brought from Liverpool expressly to take part in the enter*prise. Of these last a considerable [423] portion consisted of the very same persons, many of them British subjects, who had been rescued from the waves by British intervention at the moment when they had surrendered from the sinking Alabama, the previous history of which is but too well known to your Lordship.

"Thus equipped, fitted out, and armed from Great Britain, the successor to the destroyed corsair, now assuming the name of the Shenandoah, though in no other respects changing its British character, addressed itself at once to the work for which it had been intended. At no time in her later career has she ever reached a port of the country which her commander has pretended to represent. At no instance has she earned any national characteristic other than that with which she started from Great Britain. She has thus far roamed over the ocean receiving her sole protection against the consequences of the most piratical acts from the gift of a nominal title which Great Britain first bestowed upon her contrivers, and then recognized as legitimating their successful fraud."

It is not necessary to follow in detail the cruise of the Shenandoah from Madeira to Melbourne. It is enough to say that it lasted ninety days,[1] *during which time several vessels of the merchant [424] marine of the United States were destroyed, with valuable cargoes. On the 25th of January, 1865, she "dropped anchor off Sandridge, a small town about two miles from Melbourne."[2]

"The November mail from Europe, which arrived at Melbourne about the middle of January, had brought the news that the Sea King had left England with the intention of being converted into a war vessel to cruise against the commerce of the United States."[3] Suspicions were at once aroused that the newly-arrived man-of-war under the insurgent flag was no other than the Sea King; suspicions which were confirmed by the statements of the prisoners from the captured vessels, and by others.[4]

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[1] Cruise of the Shenandoah, page 93.
[2] Cruise of the Shenandoah, page 94.
[3] Blanchard to Seward, Vol. III, page 384; Vol. VI, page 588.
[4] See depositions in Vol. III, on pages 399, 401, 402, 405, 407, and 417. The same depositions may be found in Vol. VI. This point appears to have been settled beyond doubt. See extract from Melbourne Herald, Vol. VI, page 650.

The Consul of the United States appears to have acted with both courtesy and vigor. He placed before the authorities all the information in his possession, tending to show the illegal origin of the vessel, and the liabilities which she was imposing upon Great Britain by her depredations on the commerce of the United States.[1] He told
[425] the Governor that the "Shenandoah, alias Sea *King," had never "entered a port of the so-styled Confederate States for the purposes of naturalization, and consequently was not entitled to belligerent rights;"[2] and that the table-service, plate, &c., on the vessel all bore the mark of "Sea King." He earnestly urged that "after the severest scrutiny it should be determined if this vessel and crew are entitled to the rights of belligerency, or whether the vessel should not be detained until the facts can be duly investigated."[3] When he found that, in spite of his remonstrances and of the proof of her character, it had been decided that the Shenandoah should be repaired, and should be allowed to take in supplies and coals, he protested "in behalf of his Government against the aid, comfort, and refuge" extended to her.[4] When he was informed that the Governor had come to the decision "that whatever may be the previous history of the Shenandoah, the Government of the Colony is bound to treat her as a ship of war belonging to a belligerent Power," he protested afresh, and notified the Governor "that the United States will claim indemnity for the damages already done to its shipping by said vessel, and also which may hereafter be committed if allowed to depart from
[426] *this port."[5] He placed in the hands of the Attorney General conclusive "evidence to establish that the Shenandoah is in fact the Sea King."[6] When it came to his knowledge that Waddell was enlisting a crew in Melbourne for the Shenandoah, he put the proof of it at once into the hands of the Governor.[7] When he heard that she was taking coal on board he communicated that fact also.[8] From the beginning of the visit of the Shenandoah at Melbourne to the hour of her departure, this officer was constant in his vigilance, and in his efforts to aid the British authorities in the performance of their duties, as the representatives of a neutral nation.

As soon as she arrived, almost before her anchor was dropped, her commander wrote to the Governor for permission to "make the necessary repairs and obtain a supply of coals."[9]

This letter was officially answered the next day, after the twenty-four hours allowed by the instructions of January, 1862, for his stay had expired. He was told that directions had been given to enable him to make the necessary repairs and to coal his vessel, and he was asked, at his earliest convenience, to intimate the nature and extent of
[427] *his requirements as regards repairs and supplies.[10] This was the official answer. The real answer had been given the previous night to Waddell's messenger, who was dispatched on shore "as soon as practicable the afternoon of arrival, to confer with the authorities and obtain permission for the ship to remain and procure some neces-

[1] See Mr. Blanchard's dispatch to Mr. Seward, Vol. III, page 384.
[2] Vol. III, page 394; Vol. VI, page 598.
[3] Blanchard to Darling, Vol. III, page 396; Vol. VI, page 598.
[4] Blanchard to Darling, Vol. III, page 397; Vol. VI, page 600.
[5] Blanchard to Darling, Vol. III, page 398; Vol. VI, page 602.
[6] Vol. III, pages 403 and 404, 405 and 407. See also Vol. VI.
[7] Vol. III, pages 414, 420, 423, 427, 428. See also Vol. VI.
[8] Vol. III, page 425; Vol. VI, page 630.
[9] Waddell to Darling, Vol. V, page 599.
[10] Francis to Waddell, Vol. V, page 599; Vol. VI, page 639.

sary repairs." "He returned *before midnight, having succeeded in his mission.*"[1]

Two days were taken to reply to the question as to the nature and extent of the needed repairs and supplies. Waddell then stated, as a reason why he could not yet report, that the mechanics had not reported to him. He spoke generally about the condition of his propeller shaft, and the bearings under water, and, he added, "*the other repairs are progressing rapidly.*"[2] It thus appears that he had been at that time three days in port, had made no official statement of the supplies or the necessary repairs, and that he had a force at work upon his vessel, without any report to the Governor showing the necessity.

The next day he was asked to furnish a list of supplies required for the immediate use of his vessel.[3] He appears to have furnished such a statement, but it has not been printed in any document within [428] the control of the United States. As the list is in the possession of Great Britain, it will doubtless be produced, if it tends to release that Government from responsibility.

On the following day, being the fifth day after he arrived in port, the fourth day after he received permission to make his repairs, and the third or fourth day after the repairs were commenced, he reported to the Governor that the lining of the outer sternback (probably meaning the outer sternbush) was entirely gone, and that in order to replace it the Shenandoah must go into the Government slip for about ten days.

On the 1st of February the Governor assented to the making of these repairs[5] and the time named for them.

On the 7th of February, through his Secretary he called upon Captain Waddell "to name the day when he would be prepared to proceed to sea."[6] Waddell said that he could not name a day; and he gives excuses why his vessel was not yet on the slip; a fact which furnishes the evident reason for the letter of the Governor's Secretary.[7]

On the 14th of February, a week later, inquiry is again made [429] whether he is "in a position to state more definitely when the Shenandoah will be in a position to proceed to sea."[8]

The reply shows that the Shenandoah was then on the slip, and was to be launched the next day. He thought he could proceed to sea by the 19th, though he had yet to take in all his stores and coals.[9]

The next correspondence between Waddell and the Governor's Secretary furnishes the solution of the delay in the original report upon the repairs, the delay in the getting the vessel into the slip, the delay in getting her out of it, and the unreasonable time required "to take in stores, coals, and to swing the ship." During all this time Waddell had been enlisting men for the Shenandoah out of the streets of Melbourne, and had protracted his repairs as an excuse for delay, while he filled up the thin ranks of his crew.

The arrival of this vessel at Melbourne had produced a profound sensation. An inquiry was made of the Government in the Legislature to know if Her Majesty's Proclamation had not been violated by the Shenandoah. The member making the inquiry called attention to

[1] Cruise of the Shenandoah, page 97.
[2] Vol. V, page 600; Vol. VI, page 640.
[3] Francis to Waddell, Vol. V, page 600; Vol. VI, page 641.
[4] Waddell to the Commissioner of Trade, Vol. V, page 600; Vol. VI, page 641.
[5] Francis to Waddell, Vol. V, page 602; Vol. VI, page 644.
[6] Francis to Waddell, Vol. V, page 602; Vol. VI, page 643.
[7] Waddell to Francis, Vol. V, page 602; Vol. VI, page 644.
[8] Francis to Waddell, Vol. V, page 602; Vol. VI, page 644.
[9] Waddell to Francis, Vol. V, page 602; Vol. VI, page 644.

[430] the news of the de*parture of the Sea King from London for the purpose of being converted into a cruiser, and he showed that the Sea King and the Shenandoah were the same vessel. The House was opposed to him, and he was called to order as he did this. The Chief Secretary replied, not so much calling in question the identity of the Sea King with the Shenandoah, as doubting the propriety of accepting the fact on the evidence quoted by the former speaker; and he added that, "in dealing with this vessel, they had not only to consider the terms of the proclamation referred to, *but also the confidential instructions from the Home Government.*"[1]

Here the United States learned for the first time that, in addition to the published instructions which were made known to the world, there were private and confidential and perhaps conflicting instructions on this subject. It is beyond their power to furnish to this Tribunal copies of these confidential instructions. Should their production be deemed important by Her Majesty's Government, or should they tend to relieve Great Britain from liability to the United States, they will, undoubtedly, be furnished to the Tribunal.

[431] The Consul of the United States at Melbourne *penetrated the reasons for Waddell's delay, and supplied the Colonial Authorities with evidence that men were being enlisted at Melbourne for the Shenandoah. His first letter to the Governor on this subject was dated the 10th of February. In it he called attention "to the shipment of men on board said Shenandoah in this port."[2] Again, on the 14th of February, he transmitted to the Governor further proof on the same subject.[3]

The affidavits furnished by the Consul showed that an enlistment on a large scale was going on. The affidavit of Wicke, for instance, spoke of a cook named "Charley," and ten men;[4] the affidavit of Behncke, of "about ten men concealed in said Shenandoah."[5]

The authorities proceeded against "Charley" only. They carefully let alone Captain Waddell and his officers, who had been violating Her Majesty's Proclamation and the laws of the Empire,[6] and they [432] aimed the thunders of the law *against an assistant cook. When the officer arrived at the vessel to serve the warrant for Charley's arrest, he was informed that no such person was on board. On expressing a wish to ascertain this fact for himself, his request was refused.[7] The next day he went again, and Captain Waddell "stated, on his honor and faith as a gentleman and an officer, that there was no such person as Charley on board."[8] On the evening of the same day Charley and three other men who had been enlisted in Melbourne were arrested as

[1] Vol. V, page 611; Vol. VI, page 660; et seq. It was in consequence of these doubts expressed by the Chief Secretary that the Consul furnished the evidence of the identity of the two vessels. Vol. III, page 386; Vol. VI, page 590.
[2] Blanchard to Darling, Vol. III, page 420; Vol. VI, page 625.
[3] Blanchard to Darling, Vol. III, page 414; Vol. VI, page 619.
[4] Vol. III, page 421; Vol. VI, page 625.
[5] Vol. III, page 422; Vol. VI, page 626.
[6] The second section of the Foreign Enlistment Act of 1819 made it illegal to procure any person to engage to enlist as a sailor in sea service under any person assuming to exercise any powers of government, or to agree to go from any part of Her Majesty's dominions for the purpose of being so enlisted; and persons committing that offense were to be deemed guilty of a misdemeanor, and to be punished, on conviction, by fine or imprisonment, or both. It would be difficult to describe what Captain Waddell actually did at Melbourne in more accurate language than this.
[7] Vol. V, page 618; Vol. VI, page 665.
[8] Vol. V, page 618; Vol. VI, page 665.

they left the Shenandoah by the water police,[1] thus showing that they must have been there all the while.

In consequence of this the permission to make repairs was suspended; but it was soon restored. The reason given for the restoration was that, Charley being taken, Waddell was "in a position to say, as commanding officer of the ship, that there were no persons on board except those whose names are on the shipping articles, and that no one has been enlisted in the service of the Confederate States since arrival in this port."[2] It does not appear that Waddell made any such commitment; on the contrary, he said that he considered "the tone of the letter remarkably disrespectful and insulting."

*The Melbourne authorities did not insist upon having such an assurance. The Secretary of the Governor had said that Waddell was in a position to give the assurance; that was enough. The Chief Secretary said in the Assembly, speaking of the enlistment of "Charley," "it appears to me and to the Government that if anything can be a violation of strict neutrality, this is it;"[3] but he added, in a few moments, (his attention being called to the fact that there were still persons on board who had joined the ship at Melbourne,) "The particular warrant that was issued for this particular individual (Charley) was satisfied; and if further warrants are issued for other persons who may be on board, *the position of the Government will be altered.* It may be that there are other persons on board."[4] [433]

There were other persons on board whose presence was a violation of British neutrality, and whose exposure would "alter the position of the Government"—some fifty in all; but no warrant was issued, and "the position of the Government" was not "altered." The Shenandoah took on board her coal (three hundred tons in all) and her supplies, the character of which is not known to the United States, for the reasons already given.

*The United States Consul to the last did his duty. On the 17th, the day before she sailed, he informed the Governor that "the Shenandoah was taking in three hundred tons of coal, in addition to the quantity she had on board when she came into this port—about four hundred tons;" and added, "The Shenandoah is a full-rigged sailing-vessel; steam is only auxiliary with her; and I cannot believe Your Excellency is aware of the large amount of coal now being furnished said vessel."[5] This coal was dispatched from Liverpool in a vessel called the John Fraser. The ear-marks were on the transaction in the very name of the transport. [434]

On the same day the Consul also lodged with the Governor the affidavit of one Andrew Forbes, to show that six persons, residents of Melbourne, whom he named, were to join the Shenandoah outside, she being then ready to sail. As time was of importance, and a day's delay might be too late, the Consul went with his witnesses to the office of the Crown Solicitor, to whom the Attorney General had previously directed him to communicate such information. He found that officer leaving for his dinner. He told him "his business was urgent," and that he had "come as *the representative of the United States to lay before him, as Crown Solicitor, the evidence that a large number [435]

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[1] Francis to Waddell, Vol. V., page 605; Vol. VI, page 647.
[2] Ibid., Vol. V, page 605.
[3] Vol. V, page 619; Vol. VI, page 666.
[4] Vol. V, pages 620 and 667.
[5] Blanchard to Darling, Vol. III, pages 425, 426; Vol. VI, page 630.

of men were about violating the neutrality laws."[1] The Solicitor said he must go to his dinner, and passed on. The Consul then went to several other officers in order to secure immediate action on his complaint. Among others, he went to the Attorney General, who sent him to another Solicitor; but he could get no one to attend to it, and the Shenandoah left early in the morning of the 18th without further British interference.

The attention of the Tribunal of Arbitration is invited to the fact that a sworn list of the crew of the Shenandoah is attached to an affidavit made in Liverpool by one Temple ten months after the vessel left Melbourne.[2] Forbes in his affidavit, which was submitted to the Governor and laid before the Attorney General, gave the names of five persons who he had reason to believe were about to join the vessel from Melbourne. Temple's affidavit shows that at least three of those persons did join and did serve, viz, "Robert Dunning, an Englishman, captain of the foretop;[3] Thomas Evans, Welchman; and William
[436] Green,[4] *an Englishman."[5] This corroborative, independent piece of testimony establishes the truthfulness of Forbes's affidavit. This affidavit, so summarily rejected by the Crown Solicitor, was the specific evidence of the commission of a crime which Her Majesty's Government required to be furnished by the United States. When produced the British authorities declined to act upon it.

The United States assert, without fear of contradiction, that there was no time during the stay of the Shenandoah in Melbourne, when it was not notorious that she was procuring recruits. She went there for that purpose. Her effective power as a man-of-war depended entirely upon her success of obtaining a new crew. When she left the Laurel she had but twenty-three men besides her officers. With every capture between there and Melbourne great efforts were made to induce the captured seamen to enlist; and those who would not enlist were compelled to work as sailors in order to avoid being put in irons. The author of the "Cruise of the Shenandoah" says that fourteen were enlisted in this way—ten from the Alina and the Godfrey,[6] two from the Susan,[7]
[437] and two from the Stacey.[8] Temple in his affida*vit gives the names of three from the Alina, five from the Godfrey, one from the Susan, two from the Stacey, and one from the Edward.[9] It is probable that Temple's statement is correct. Of the twelve whom he names, two appear to have left the vessel at Melbourne, viz: Bruce, of the Alina; and Williams, of the Godfrey. It would therefore appear that, had the Shenandoah received no recruitment of men at Melbourne, her force on leaving would have been thirty-three marines, firemen, and ordinary seamen. One officer and two petty officers were discharged there, which reduced the number of officers to twenty, and her whole force to fifty-three. She was a full-rigged ship, 220 feet in length and 35 feet beam, and carried royal studding-sails, and required double or treble that number of men to make her effective as a man-of-war.[10] The Tribunal will see how important it was to recruit men at Melbourne.

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[1] Lord to Blanchard, Vol. III, page 429; Vol. VI, page 635.
[2] Vol. III, page 477; Vol. VI, page 709.
[3] Vol. III, page 488; Vol. VI, page 719.
[4] Vol. III, page 489; Vol. VI, page 727.
[5] Vol. III, pages 489, 490; Vol. VI, page 721.
[6] Cruise of the Shenandoah, page 42.
[7] Ibid., page 43.
[8] Ibid., page 47.
[9] Vol. III, pages 487–491; Vol. VI, page 718, *et seq.*
[10] Cruise of the Shenandoah, page 23.

She took in there, according to the account given by the author of the Cruise of the Shenandoah, forty-five men.[1] Temple, in his affidavit, gives the names of forty-three, divided as follows: one officer, twelve petty officers, twenty seamen, seven firemen, and three marines. The United *States complain of this act, not alone as a technical [438] violation of the duties of a neutral, as laid down in the second rule of the Treaty, but as a great injury to them, from which flowed the subsequent damages to their commerce from the Shenandoah. This recruitment might have been stopped by the exercise of the most ordinary diligence. It ought to have been stopped after the Consul's letter of the 10th of February. It ought to have been stopped after his letter of the 14th. The authorities should have detained the Shenandoah on the information he communicated on the 17th. Most of the men went on board that night. It was a great negligence not to have prevented this. When the Shenandoah sailed on the morning of the 18th, the whole community knew that she had more than doubled her force in Melbourne. The newspapers of the next day were full of it. The Herald said: "Rumors are afloat that the Shenandoah shipped or received on board somewhere about eighty men."[2] The Argus said: "It is not to be denied that during Friday night a large number of men found their way on board the Shenandoah, and did not return on shore again."[3] And the Age said: "It is currently reported that she shipped some eighty men."[4] It *is not probable—it may indeed [439] be said to be most improbable—that a shipment of half that number of men could have been made without complicity of the authorities. Mr. Mountague Bernard intimates that they could not have come there without the knowledge of Captain Waddell.[5] A similar train of reasoning will convince the Tribunal of Arbitration that the least measure of "diligence" would have discovered the fact to the local authorities.

The permitting a shipment of three hundred tons of coal at Melbourne was also a violation of the duties of a neutral. The Shenandoah was a sailing vessel. Her steam power was auxiliary. From early in December until two days before her arrival at Melbourne, some seven weeks in all,[6] she was under sail, without using her steam; she went from Land's End to Madeira in the same way.[7] She took on board, when she left London, a supply of coal for twelve months. Four hundred tons of it remained when she reached Melbourne. She required no fresh supply to enable her to return to an insurgent port, and she sought it only for the purpose of cruising against the commerce of the United States, thus making Melbourne a base of the insurgent naval operations. *The United States are of the opinion that it [440] was a breach of the duties of an impartial neutral to permit unlimited supplies of coal to be furnished to the Shenandoah in a British port, under circumstances similar to those in which like supplies had been refused to the vessels of the United States; and that it was a still greater violation to permit the supply to be furnished from the insurgent transport, John Fraser, dispatched from Liverpool for that purpose, while the United States were forbidden to supply their vessels in like manner.

[1] Cruise of the Shenandoah, page 113.
[2] Vol. III, page 435; Vol. VI, page 683.
[3] Vol. III, page 436; Vol. VI, page 684.
[4] Vol. III, page 436; Vol. VI, page 685.
[5] Bernard's Neutrality, page 434.
[6] Cruise of the Shenandoah, pages 63–94.
[7] Schutcher's affidavit, Vol. III, page 365; Vol. VI, page 586.

When the Shenandoah left London she took general supplies for a year; yet she was allowed to replenish at Melbourne within less than six months from the time of leaving London. It must be concluded from the declarations of the author of the Cruise of the Shenandoah, that when this was done she had enough supplies on board for the subsistence of the crew to the nearest insurgent port. The addition obtained at Melbourne enabled her to continue her hostile cruise and to light up the icy seas of the north with the fires of American vessels, long after the military resistance to the United States had ceased.

The United States further insist that when the authorities at Melbourne permitted the Shenandoah to make repairs to her machinery in that port, a still greater violation of the duties of Great Britain as a neutral was committed.

It has just been shown that this vessel was under no necessity of using her steam; that she had gone to Madeira under sail; that she had come from the Cape of Good Hope to Melbourne under sail. For many days before arriving at Melbourne "a heavy and continuous gale" prevailed.[1] At its height it was "sublime beyond description," and the Shenandoah "drove before it at the rate of eleven knots an hour, under close-reefed topsails and reefed foresail."[2] Yet the author of the Cruise of the Shenandoah makes no mention of any injury to the vessel, or of any leak, and there is nothing to show that the hull needed repairs, or that anything was done to it except that "a gang of calkers were procured and went to work upon the decks with pitch and oakum."[3] The United States are convinced that no other repairs were necessary for the hull, and that if the departure of the vessel was delayed for the ostensible purpose of further repairs to the vessel itself, the pretense was made solely for the purpose of delay.

The repairs to the machinery, as distinguished from the hull, were made with the object of enabling the Shenandoah to go to the Arctic
[112] Ocean, there to destroy the whalers of the United States, *in accordance with Bullock's instructions to Waddell before he left Liverpool.[4] It is evident, not only from the absence of any mention of injury to the hull by the author of the Cruise of the Shenandoah, but also from the statement of experts of the repairs which the machinery required, that the hull was sound and seaworthy, and that the Shenandoah as a sailing-vessel, without steam, could at once have proceeded to sea, and have made her way to the insurgent ports.[5] When Captain Boggs, of the United States Navy, two months later, (after the surrender of Lee,) asked permission to remain at Barbadoes "a few days, for the purpose of overhauling the piston and engine," he was required, as a preliminary to the permission, to "give a definite assurance of his inability to proceed to sea."[6] As a man of honor and truth he could not do this, and he went to sea without his repairs. The same rule applied to the Shenandoah would have produced the same result, supposing Captain Waddell to have been as honorable and as truthful a man as Captain Boggs.

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[1] Cruise of the Shenandoah, page 66.
[2] Ibid., page 67.
[3] Ibid., page 104.
[4] Vol. III, page 461; Vol. VI, page 705.
[5] It is true that the insurgents had no ports at that time which the Shenandoah could enter. Wilmington, the last of their ports, was closed by the capture of Fort Fisher. This, however, was an additional reason why the Shenandoah should not have been allowed to leave Melbourne, carrying a flag that had no port to receive it. See the correspondence between the United States and Portugal referred to ante, page 59.
[6] Walker to Boggs; Vol. VI, pages 178-9.

*Twenty-four hours elapsed before any questions were put to [443]
Captain Waddell by the local authorities. Then he was told to state what repairs he wanted, in order that the Governor might know how long he was to enjoy the hospitalities of the port. He delayed for two days to answer this question, going on, however, in the meanwhile with some of his repairs. He then reported the repairs already begun as "progressing rapidly," and added that Langland Brothers & Co. were to examine the propeller and bracings (probably a misprint for "bearings") under water; that a diver had that day examined them; and that "so soon as Messrs. Langland Brothers & Co. should hand in their report" he would inclose it.

Two days later, on the 30th, Langland Brothers & Co. made their report, "after inspection by the diver," saying that "the lining of the outer sternback" (probably a misprint for "sternbush") is entirely gone, and will have to be replaced; that "three days will elapse before she is slipped," and that they "will not be able to accomplish the repairs within ten days from date."[1]

The Tribunal will observe that it was proposed that two kinds of repairs should be made.

The first class did not require the vessel to go into the slip. These included the calking referred *to by the author of the Cruise of [444]
the Shenandoah,[2] and perhaps also repairs of a general character, which all steam machinery requires after having been run for any length of time, such as refitting of brasses, packing stuffing-boxes, examining and readjusting of working parts, &c., &c. All these repairs could have gone on simultaneously. Such coal as might be allowed within the construction of the instructions of January 31, 1862, as those instructions were applied to the vessels of the United States, and such supplies as were legally permitted, could also be taken on, and the vessel could be ready to go to sea again in from two to four days after her arrival in port. Or, should it be necessary for the vessel to go into a slip for the purpose of repairing the propeller, this class of repairs might also be going on in the slip, at the same time with the others.

The other class of repairs were those which Langland Brothers & Co. were to report upon—repairs to the propeller. It appears from the report made by these mechanics on the 30th of January, that they founded their estimate upon the report of a diver. Mechanics ordinarily have to depend upon such a report, and to found their estimates upon it. The examination of the propeller of a screw-steamer, and of its bearings *below the water-line, is a simple matter, and takes but a [445]
short time. It is confined to the stern of the vessel. A practical expert can go down, satisfy himself of the extent of the injury, and return and report in a few minutes. Had the Governor treated Captain Waddell as Captain Boggs was treated, the examination could easily have been made on the morning of the 26th, and the whole extent of the injury could have been reported to the Governor on the afternoon of the same day within twenty-four hours after the arrival of the vessel in port. Captain Waddell, however, was not required to move so rapidly. He did not send his diver down until the 28th; he did not get the official report of his mechanics until the 30th. Thus he spent five days in doing what could have been done in five hours. There must have been a motive for that delay; the United States find that motive in his necessity to enlist a crew.

[1] Waddell to Francis, Vol. V, page 600; Vol. VI, page 640.
[2] Cruise of the Shenandoah, page 77.

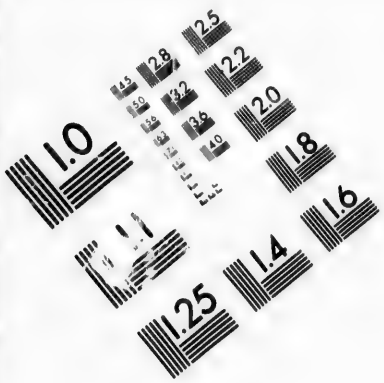
The Tribunal will also observe that his own report on the 28th of the extent of his injuries differs from that made by his mechanics on the 30th. He reported that "the composition castings of the propeller-shaft were entirely gone, and the bracings (probably a misprint for "bearings") under water were in the same condition." This was a more serious injury than the one reported by his mechanics two days later,
[446] namely, the *necessity of giving the shaft a new outer sternbush. The latter would, it is true, require the docking of the ship to admit of the removal of the shaft. But when the ship was once in the slip, the propeller could be easily hoisted, being a movable one;[1] and then the renewal of the lignum-vitæ lining, technically known as the sternbush, the only repairs which the experts reported to be necessary, could be completed two or three days after the ship should be on the slip. If the vessel was necessarily longer on the slip she must have received more repairs than are described in the official report of the Langlands, which embraced all for which the permission was granted.

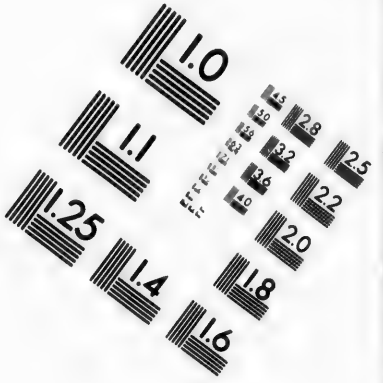
It therefore appears that, on the supposition that the authorities at Melbourne could, under the circumstances, without violating the duty of Great Britain as a neutral, permit the repairs reported by Langland Brothers & Co. to be made, the Shenandoah should have gone to sea in ten days after her arrival. This estimate gives the extreme time for every requisite step, viz: one calendar day for the examination of the diver, excluding the day of arrival; three days (the estimate of the Langlands) for putting the vessel in the slip; three days for the repairs by the Langlands; one day for getting her out of the slip; and
[447] two days for *reloading and getting to sea, which was the time actually taken; but as, during this time she unwarrantably took on board three hundred tons of coal, this is probably too large an estimate. Instead of requiring these repairs to be completed in ten days, the Melbourne authorities allowed the Shenandoah to stay there twenty-four days. The extra fourteen days were occupied in the recruitment of the forty-three men whom she carried away with her. It is difficult, under the circumstances, to resist the conclusion that the repairs were dawdled along for the purpose of securing the recruits, and that the authorities, to say the least, shut their eyes while this was going on; especially if it be true, as said by Temple, that the Government engineer was on board three or four times a day while they were undergoing repairs, and assisted them with his opinion and advice.[2] It is fair to say that this fact is doubted by the Governor of the Colony.[3] If the Government engineer was not there, however, he should have been, in order to see that Waddell was not violating British neutrality.

Leaving Melbourne, the Shenandoah went through the Pacific Ocean to the Arctic Seas, via Behring's Straits, under the instructions
[448] issued by Bullock, in Liverpool, for the purpose of destroy*ing the whalers of the United States. How successful she was in her attacks upon these intrepid and daring navigators is shown by the long list of captured vessels, for whose destruction the United States claim compensation.

On the cruise to those seas she used her sails only. After arrival there she commenced steaming on the 25th of June, and "from that time till she left the Arctic Seas she made comparatively little use of her sails."[4] Many of the most valuable vessels were destroyed after

[1] Wilson's affidavit, Vol. III, page 325; Vol. VI, page 566.
[2] Temple's affidavit, Vol. III, page 481; Vol. V, page 712.
[3] Darling to Cardwell, Vol. III, page 506.
[4] Cruise of the Shenandoah, page 187.





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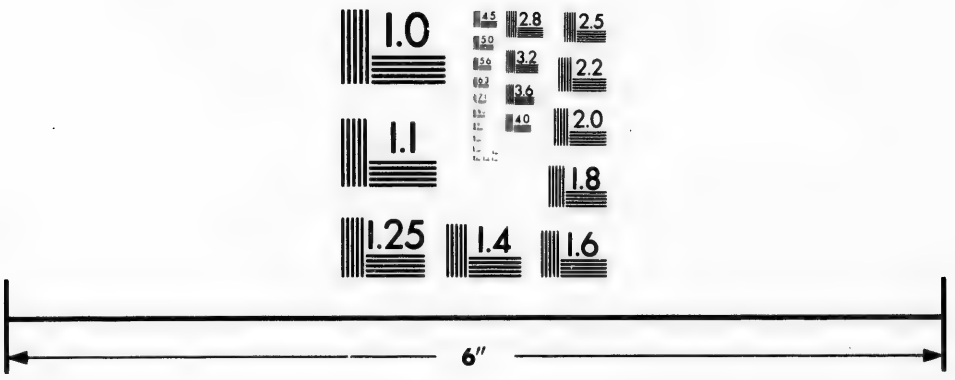

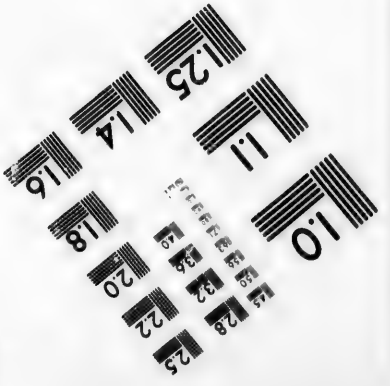

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that time. Temple names, in his affidavit, fifteen that were destroyed after Waddell knew of the suppression of the insurrection.[1] Bullock wrote him a letter, instructing him "to desist from any further destruction of United States property,"[2] and Earl Russell undertook to send the letter "through the British Consuls at the ports where the ship may be expected." It was not until the 17th day of October, 1865, that she ceased to be officially registered as a British vessel. Waddell arrived at Liverpool with the Shenandoah on the 6th of the following November, and wrote Earl Russell that the destructions committed on the 28th of June—when Temple said that he knew of the *surrender of Lee—were committed "in ignorance of the obliteration of the Government." He said that he received his first [449] intelligence on the 2d of August. The author of the Cruise of the Shenandoah says that they received, on the 28th of June, while burning the whalers, the news of the assassination of Mr. Lincoln.[3] This event took place a week after the surrender of Lee. The affidavits of Temple and Nye in Vol. VII indicate still earlier knowledge. It would seem, therefore, that Waddell's statements to Earl Russell could not have been correct.

"The re-appearance of the Shenandoah in British waters" was regarded as "an untoward and unwelcome event." The Times reminded the public that "in a certain sense it was doubtless true that the Shenandoah was built and manned in fraud of British neutrality."[4] Great Britain dealt with the "untoward" question as it had dealt with others during the contest—by evading it. The vessel was delivered to the United States. The men who had been preying upon the commerce of the United States for months without a semblance of authority behind them, most of whom were British subjects, with unmistakable British bearing and speech, were called before an officer of the British Navy *to be examined as to their nationality, they understand- [450] ing in advance that it was a crime for British subjects to have served on the Shenandoah. "Each one stated that he belonged to one or the other of the States of America,"[5] and they were discharged without further inquiry.

On the 28th of December, 1865, Mr. Adams, commenting upon these proceedings, wrote to Earl Clarendon as follows:[6] "I trust it may be made to appear—

"1. That the Sea King did depart from a British port armed with all the means she ever had occasion to use in the course of her cruise againts the commerce of the United States; and that no inconsiderable portion of her hostile career was passed while she was still registered as a British vessel, with a British owner, on the official records of the Kingdom.

"2. That the commander had been made fully aware of the suppression of the rebellion the very day before he committed a series of outrages on innocent, industrious, and unarmed citizens of the United States, in the Sea of Okhotsk.

"3. The list of the crew, with all the particulars attending the sources from which the persons were drawn, is believed to be so far sub-

[1] Vol. III, pages 482, 483; Vol. VI, page 709, *et seq.* This statement by Temple is confirmed by Hathaway's affidavit, Vol. VII, page 95.
[2] Vol. III, page 458; Vol. VI, page 698.
[3] Cruise of the Shenandoah, page 206.
[4] London Times, November 8, 1865; Vol. III, page 449.
[5] Cheek to Paynter, Vol. III, page 505.
[6] Vol. III, page 475.

[451] stantially *correct as to set at rest the pretense of the officer sent on board that there were no British subjects belonging to the vessel."

The United States confidently insist that they have incontestably established the points there claimed by Mr. Adams; and further,

"4. That the Shenandoah was fitted out and armed within British jurisdiction, namely, at London, for the purpose of cruising against the United States; that Great Britain had reasonable ground to believe that such was the case, and did not use due diligence to prevent it.

"5. That she came again within British jurisdiction, where all these facts were open and notorious, and the British authorities exercised no diligence to prevent her departure, but claimed the right to treat her as a commissioned man-of-war, and to permit her to depart as such.

"6. That twice within British jurisdiction she received large recruitments of men, without due diligence being used to prevent it: 1st. At Liverpool, from whence the men were forwarded by the Laurel; and, 2d, at Melbourne.

"7. That she was allowed to make repairs and to receive coal and supplies which were denied to vessels of the United States in similar circumstances."

[452] The subsequent career of the steamer Laurel, *which, with the Shenandoah, formed the hostile expedition against the United States, throws additional light on the sincerity of the British neutrality in the case of the Shenandoah. On the 7th of March, 1865, Mr. Adams wrote as follows to Earl Russell:

"I am pained to be obliged once more to call your attention to the proceedings of the vessel called the steamer Laurel:

"This is the vessel concerning which I had the honor to make a representation, in a note dated the 10th November last, which appears to have proved, in substance, correct.

"Her departure from Liverpool on the 9th October, laden with men and arms destined to be placed on board of the steamer Sea King, her meeting with that vessel at Porto Santo, in the Madeira Islands, her subsequent transfer of her freight to that steamer, which thereupon assumed the name of the Shenandoah, and proceeded to capture and destroy vessels belonging to the people of the United States, are all facts now established by incontestable evidence.

"It now appears that this steamer Laurel, having accomplished her object under British colors, instead of immediately returning to this Kingdom, made her way through the blockade to the port of [453] Charleston, where she changed her register and *her name, and assumed to be a so-called Confederate vessel. In this shape she next made her appearance at the port of Nassau as the 'Confederate States.' From that place she cleared, not long since, to go, via Madeira, to the same port of Liverpool, from whence she had originally started.

"It further appears that, notwithstanding the assumption of this new character, this vessel carried out from Nassau a ship mail, made up at the post-office of that port, and transported the same to Liverpool. I have the honor to transmit a copy of a letter from the postmaster at that place establishing that fact.

"Under these circumstances, I have the honor to inform your Lordship that I am instructed by my Government to remonstrate against the receipt and clearance with mails of this vessel from Nassau, and to request that such measures may be adopted in regard to her as may prevent her from thus abusing the neutrality of Her Majesty's territory,

for the purpose of facilitating the operations of the enemies of the United States."[1]

To this Earl Russell replied "that Her Majesty's Government are advised, that although the proceedings of the steamer Confederate States, formerly Laurel, may have rendered her liable to *capture [454] on the high seas by the cruisers of the United States, *she has not, so far as is known, committed any offense punishable by British law.*"[2]

From all these various facts, the United States ask the Tribunal of Arbitration to find and certify as to the Shenandoah, that Great Britain has, by its acts and by its omissions, failed to fulfill its duties set forth in the three rules of the Treaty of Washington, or recognized by the principles of law not inconsistent with such rules. Should the Tribunal exercise the power conferred upon it by the seventh article of the Treaty, to award a sum in gross to be paid to the United States, they ask that, in considering the amount to be awarded, the losses in the destruction of vessels and their cargoes by the Shenandoah, and the expense to which the United States were put in the pursuit of it, may be taken into account.

Summary.

In the course of the long discussions between the two Governments, which followed the close of the insurrection, it became the duty of Mr. Adams to make a summary of the points which he maintained had been established by the United States. This he did in the following language, addressed to Earl Russell:[3]

*"It was my wish to maintain— [455]

"1. That the act of recognition by Her Majesty's Government of insurgents as belligerents on the high seas before they had a single vessel afloat was precipitate and unprecedented.

"2. That it had the effect of creating these parties belligerents after the recognition, instead of merely acknowledging an existing fact.

"3. That this creation has been since effected exclusively from the ports of Her Majesty's Kingdom and its dependencies, with the aid and co-operation of Her Majesty's subjects.

"4. That during the whole course of the struggle in America, of nearly four years in duration, there has been no appearance of the insurgents as a belligerent on the ocean excepting in the shape of British vessels, constructed, equipped, supplied, manned, and armed in British ports.

"5. That during the same period it has been the constant and persistent endeavor of my Government to remonstrate in every possible form against this abuse of the neutrality of this Kingdom, and to call upon Her Majesty's Government to exercise the necessary powers to put an effective stop to it.

"6. That although the desire of Her Majesty's Ministers to exert themselves in the suppression of these abuses is freely acknowledged, the efforts *which they made proved in a great degree [456] powerless, from the inefficiency of the law on which they relied, and from their absolute refusal, when solicited, to procure additional powers to attain the objects.

"7. That, by reason of the failure to check this flagrant abuse of neutrality, the issue from British ports of a number of British vessels, with the aid of the recognition of their belligerent character in all the ports of Her Majesty's dependencies around the globe, has resulted in the

[1] Vol. III, page 339. [2] Vol. III, page 341. [3] Vol. III, page 533.

burning and destroying on the ocean of a large number of merchant vessels, and a very large amount of property belonging to the people of the United States.

"8. That, in addition to this direct injury, the action of these British-built, manned, and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and to a corresponding extent enlarging that of Great Britain, thus enabling one portion of the British people to derive an unjust advantage from the wrong committed on a friendly nation by another portion.

"9. That the injuries thus received by a country which has meanwhile sedulously endeavored to perform all its obligations owing to the imperfection of the legal means at hand to prevent them, as well as the
[457] unwillingness to seek for more *stringent powers, are of so grave a nature as in reason and justice to constitute a valid claim for reparation and indemnification."

The United States, with confidence, maintain that every point thus asserted by Mr. Adams has been established by the proof hereinbefore referred to. In leaving in the hands of the Tribunal this part of their Case, they think it no impropriety earnestly to call attention to the magnitude of the issues to be decided.

Many a vindictive and bloody war has grown out of less provocation than the United States thus suffered from a nation with which they supposed that they were holding friendly relations. On the 4th of July, 1777, during the war of the American Revolution, Lord Stormont was instructed to say to the French Ministers that "the shelter given to the armed vessels of the rebels, the facility they have of disposing of their prizes by the connivance of the Government, and the conveniences allowed them to refit, are such irrefragable proofs of support, that scarcely more could be done if there was an avowed alliance between France and them, and that we were in a state of war with that Kingdom." He was also directed to say that however desirous of maintaining the peace, His Britannic Majesty could not, "from his respect
[458] to his honor and his regard to the interest of his trading *subjects, submit to such strong and public instances of support and protection shown to the rebels by a nation that at the same time professes in the strongest terms its desire to maintain the present harmony subsisting between the two Crowns."[1]

The injuries inflicted upon the United States during the insurrection, under the cover of professions of friendship, are well described in this language of the Ministers of George III, except that the insurgents were allowed to burn, instead of assisted to dispose of their prizes. But the United States, although just emerging from a successful war, with all the appliances of destruction in their grasp, preferred to await a better state of feeling in Great Britain, rather than follow the example of that Government in resorting to war. The time came when Her Majesty's Government felt that it would not be derogatory to the elevated position of their Sovereign to express regret for the escape of the cruisers and for the depredations which they committed. The United States, receiving this expression of regret in the spirit in which it was made, stand before this Tribunal of Arbitration to abide its judgment.

If the facts which they bring here constitute, in the opinion of the Tribunal, no just cause for claim against Great Britain, they must

[1] Vol. III, page 599.

bow to the *decision. But if, on the other hand, Great Britain [459] shall not be able to explain to their complete satisfaction the charges and the proof which they present, the United States will count upon an award to the full extent of their demand. They feel that it is their duty to insist before this August Body, not only in their own interest, but for the sake of the future peace of the world, that it is not a just performance of the duties of a neutral to permit a belligerent to carry on organized war from its territories against a Power with which the neutral is at peace.

If this Tribunal shall hold that combined operations like those of Bullock, Fraser, Trenholm & Co., Huse, Heyliger, and others, (which in the judgment of the United States constituted an organized war,) are legitimate, their decision will, in the opinion of the United States, lay the foundation for endless dissensions and wars.

If wrongs like those which the United States suffered are held by this Tribunal to be no violation of the duties which one nation owes to another, the rules of the Treaty of Washington can have little effective force, and there will be little inducement for nations in future to adopt the peaceful method of arbitration for the settlement of their differences.

If it was right to furnish the Nashville at Ber*muda with a [460] full supply of coal, sufficient to carry her to Southampton, instead of what might be necessary for her return to Charleston, the United States and the other maritime nations must accept the doctrine in the future.

If there was no violation of international duty in receiving the Sumter at Trinidad, and in supplying her with the fuel necessary to enable her to continue her career of destruction, instead of giving her what was requisite, with her sailing power, to enable her to return to New Orleans or Galveston, it is important that the maritime Powers should know it.

If recognized vessels of war, like the Sumter and the Georgia, may be lawfully sold in a neutral port during time of war, the United States, as a nation whose normal condition is one of neutrality, accept the doctrine.

If the duties of a neutral in preventing, within its territory, the construction, arming, equipping, or fitting out of vessels by one belligerent, which may be intended to cruise against the other belligerent, or the furnishing of arms or military supplies to such vessel, or the recruitment of men for such belligerent, are to be limited to the exercise of the powers conferred upon the neutral Government by municipal law, the United States, with their extended frontier on both oceans, have more *interest than any other maritime Power in recogniz- [461] ing that fact.

If the recognition of belligerency by a neutral, in favor of an organized insurrection, authorizes a so-called Government of insurrectionists to issue commissions, which are to protect vessels that may have violated the sovereignty of the neutral from examination, inquiry, or punishment by the neutral authorities when again within their jurisdiction, the United States, and other nations here represented, must hold themselves at liberty in future to conform to such measure of duty, in that respect, as may be indicated by this Tribunal.

If Georgias, Alabamas, Floridas, and Shenandoahs may be allowed to go out from neutral ports without violations of international duty, to prey upon the commerce of friendly nations; if it be no offense to recruit men for them and to send the recruits to join them in Alars,

Bermudas, Bahamas, and Laurels, the United States as a neutral will be relieved, when other States are at war, from a great part of the difficulties they encounter in watching a long line of coast.

If Tallahassees and Chickamaugas may be constructed in neutral territory, without violation of international duty, to serve as it may suit the pleasure of a belligerent, alternately either as blockade-
[462] runners or as men-of-war, those maritime *nations whose normal condition is one of neutrality need not regret such a doctrine, when viewed, not in the light of principle, but as affecting their pecuniary interests.

And if it be no offense, as in the case of the Retribution, to take a captured cargo into a neutral port, and there to dispose of it with the knowledge and without the interference of the local magistracy, the maritime Powers, knowing that such buccaneering customs are to be permitted, will be the better able to guard against them.

It will depend upon this Tribunal to say whether any or all of these precedents are to be sanctioned and are to stand for future guidance.

The United States, in closing this branch of the Case, desire to call the attention of the Tribunal to the fact that they came out from this long and bloody contest without serious cause of complaint against any nation except Great Britain.

The conduct of other nations contrasted with that of Great Britain.

The Executives of other nations issued notices to their citizens or subjects, enjoining upon them to remain neutral in the contest.

Belgium issued a notice on the 25th of June, 1861, warning
[463] Belgians against engaging as priva*teers.[1] The United States had never any cause of complaint in this respect against Belgium.

The Emperor of the French, on the 10th of June, 1861, issued a proclamation commanding his subjects to "maintain a strict neutrality in the struggle entered upon between the Government of the Union and the States which pretended to form a separate confederation."[2] The United States refer to the foregoing recital of the proceedings against Mr. Arman's vessels, as a proof of the fidelity with which the Imperial Government maintained the neutrality which it imposed upon its subjects.

The Government of the Netherlands forbade privateers to enter its ports, and warned the inhabitants of the Netherlands and the King's subjects abroad not to accept letters of marque.[3] The United States have no knowledge that these directions were disobeyed.

The Government of Portugal shut the harbors of the Portuguese dominions against privateers and their prizes.[4] Of this the United States had no complaint to make. At a later period that Government went so far "as to forbid the coaling of any steamer designing to violate the blockade," and to "require a bond to be given, before allowing
[464] *coals to be furnished at all, that the ship receiving the supply will not run the blockade."[5] When the insurgent iron-clad Stonewall came into Lisbon Harbor in March, 1865, it was ordered to leave in twenty-four hours.[6] The United States bear willing testimony to this honorable conduct of Portugal.

The Prussian Government announced that it would not protect its shipping or its subjects who might take letters of marque, share in pri-

[1] Vol. IV, page 3.
[2] Vol. IV, page 4.
[3] Vol. IV, page 6.
[4] Vol. IV, page 7.
[5] Mr. Harvey to Mr. Seward, Diplomatic Correspondence, 1864, part 4, page 296.
[6] Same to same, Diplomatic Correspondence, 1865, part 3, page 109.

vateering enterprises, carry merchandise of war, or forward dispatches.[1] The United States have no reason to suppose that the subjects of the King of Prussia departed from the line of duty thus indicated.

The Russian Government ordered that even "the flag of men-of-war belonging to the seceded States must not be saluted."[2]

Spain followed France in the track of England,[3] but care was taken to avoid, in the Royal Proclamation, the use of the word "belligerents."[4] It has been seen with what fidelity and impartiality the authorities at Cardenas carried out the letter and the spirit of this proclamation, when the *Florida arrived there from Nassau, in the summer of 1862. [465]

The Emperor of Brazil required his subjects to observe a strict neutrality; and his Government informed them what acts of the belligerents would forfeit the right of hospitality. It was ordered that "a belligerent who has once violated neutrality shall not be admitted into the ports of the Empire;" and that "vessels which may attempt to violate neutrality shall be compelled to leave the maritime territory immediately, and they shall be allowed to procure no supplies." These rules were enforced. The Alabama was refused the hospitality of Brazilian ports in consequence of violations of the neutrality which the Emperor had determined to maintain. When the Tuscaloosa came to St. Catharine's from Simon's Bay, in November, 1865, she was refused supplies and ordered to leave, because she was a tender and prize of the Alabama, and was tainted by the acts of that vessel. The commander of the Shenandoah boarded a vessel between Cardiff and Bahia, opened the manifest, and broke the seal of the Brazilian Consul; for this act his vessel, and any vessel which he might command, were excluded from Brazilian ports.[5] The Imperial Government, in all these proceedings, appeared desirous *of asserting its sovereignty, and [466] of maintaining an honest neutrality.

Mr. Fish, in one of his first utterances after he became Secretary of State, expressed the sense which the United States entertained of this difference between the conduct of Great Britain and that of other nations. "There were other Powers," he said, "that were contemporaneous with England in similar concessions; but it was in England only that that concession was supplemented by acts causing direct damage to the United States. The President is careful to make this discrimination, because he is anxious, as much as possible, to simplify the case, and to bring into view these subsequent acts, which are so important in determining the question between the two countries."[6]

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[1] Vol. IV, page 8.
[2] Vol. IV, page 9.
[3] Vol. IV, page 10.
[4] Vol. IV, page 9.
[5] Vol. VI, page 538.
[6] Mr. Fish to Mr. Motley, May 15, 1869, Vol. VI, page 4.

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*PART VI.

THE TRIBUNAL SHOULD AWARD A SUM IN GROSS TO THE UNITED STATES.

In the opening conference of the Joint High Commission relating to the Alabama Claims, the American Commissioners stated the nature of the demands of the United States. They said that there were "extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers, and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion." They further said that the amount of the direct losses to individuals "which had thus far been presented, amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented:" and that the direct loss to the Government "in the pursuit of cruisers could easily be ascertained by certifi-
[468] cates of Government accounting officers." They added that *"in the hope of an amicable settlement, no estimate was made of the indirect losses, without prejudice, however, to the right of indemnification on their account in the event of no such settlement being made."[1]

Offer of the American Commissioners in the Joint High Commission.

The British Commissioners declined to make the "amicable settlement" which was proposed on the part of the United States. The Joint High Commission then entered into negotiations which resulted in an agreement "in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims," that all the claims "growing out of the acts committed by the several vessels which have given rise to the claims generically known as the Alabama Claims," should be referred to this Tribunal of Arbitration. It was further agreed that this Tribunal, should it find that Great Britain had, by any act or omission, failed to fulfill any of the duties set forth in the rules in the sixth article of the Treaty, or recognized by principles of International Law not inconsistent with such rules, might then "proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it."

Rejection of the Offer by the British Commissioners.

Terms of the submission by the Treaty.

[469] *The claims as stated by the American Commissioners may be classified as follows:

General statement of the Claims.

1. The claims for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruisers.

2. The national expenditures in the pursuit of those cruisers.

3. The loss in the transfer of the American commercial marine to the British flag.

4. The enhanced payments of insurance.

5. The prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the rebellion.

So far as these various losses and expenditures grew out of the acts

[1] Ante, pages 10, 11.

committed by the several cruisers, the United States are entitled to ask compensation and remuneration therefor before this Tribunal.

Claims growing out of destruction of vessels and cargoes.

The claims for direct losses growing out of the destruction of vessels and their cargoes may be further subdivided into: 1. Claims for destruction of vessels and property of the Government of the United States. 2. Claims for the destruction of vessels and property under the flag of the United States. 3. Claims for damages or injuries to persons, growing out of the destruction of each class of vessels. In the accompanying Volume, VII, the Tribunal will find ample data for determining *the amount of damage which [470] should be awarded in consequence of the injuries inflicted by reason of the destruction of vessels or property, whether of the Government or of private persons.

Government vessels.

The Government vessels destroyed were of two classes—those under the charge of the Treasury Department, and those in charge of the Navy Department. The Tribunal of Arbitration will find in Volume VII detailed statements of this class of losses, certified by the Secretary of the Navy, or by the Secretary of the Treasury, as the case may be.

The United States reserve, however, as to this and as to all other classes of claims, the right to present further claims and further evidence in support of these and such further claims, for the consideration of this Tribunal; and also similar rights as to all classes of claims, in case this Tribunal shall determine not to award a sum in gross to the United States.

Merchant-vessels.

The United States, with this reservation, present a detailed statement of all the claims which have as yet come to their knowledge, for the destruction of vessels and property by the cruisers. The statement shows the cruiser which did the injury, the vessel destroyed, the several claimants for the vessel and for the cargo, the amounts [471] insured upon each, and all the other *facts necessary to enable the Tribunal to reach a conclusion as to the amount of the injury committed by the cruiser. It also shows the nature and character of the proof placed in the hands of the United States by the sufferers. The originals of the documents referred to are on file in the Department of State at Washington, and can be produced if desired. The United States only ask a reasonable notice, giving them sufficient opportunity to produce them.

Injuries to persons.

It is impossible, at present, for the United States to present to the Tribunal a detailed statement of the damages or injuries to persons growing out of the destruction of each class of vessels. Every vessel had its officers and its crew, who were entitled to the protection of the flag of the United States, and to be included in the estimate of any sum which the Tribunal may see fit to award. It will not be difficult, from the data which are furnished, to ascertain the names and the tonnage of the different vessels destroyed, and to form an estimate of the number of hardy, but helpless, seamen who were thus deprived of their means of subsistence, and to determine what aggregate sum it would be just to place in the hands of the United States on that account. It cannot be less than hundreds of thousands, and possibly millions of dollars.

Expenditures in pursuit of cruisers.

*The United States present to the Tribunal a detailed state- [472] ment of the amount of the national expenditure in the pursuit of the insurgent cruisers, verified in the manner proposed by the American members of the Joint High Commission. The aggregate of this amount is several millions of dollars.

The United States ask the Tribunal of Arbitration to estimate the amount which ought to be paid to them for the transfer of the American commercial[1] marine to the British flag, in consequence of the acts of the rebel cruisers.

Transfer of vessels to the British flag.

On the 13th of May, 1864, Mr. Cobden warned the House of Commons of the great losses which the United States were suffering in this respect. He said:[1]

"You have been carrying on hostilities from these shores against the people of the United States, and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars. It is estimated that the loss sustained by the capture and burning of American vessels has been about $15,000,000, or nearly £3,000,000 sterling. But that is a small part of the injury which has been inflicted on the American marine. We have rendered the rest of her vast
[473] mercantile property for the present value* less. Under the system of free trade, by which the commerce of the world is now so largely carried on, if you raise the rate of insurance on the flag of any Maritime Power you throw the trade into the hands of its competitors, because it is no longer profitable for merchants or manufacturers to employ ships to carry freights when those vessels become liable to war risks. I have here one or two facts which I should like to lay before the honorable and learned gentleman, in order to show the way in which this has been operating. When he has heard them, he will see what a cruel satire it is to say that our laws have been found sufficient to enforce our neutrality. I hold in my hand an account of the foreign trade of New York for the quarter ending June 30, 1860, and also for the quarter ending June 30, 1863, which is the last date up to which a comparison is made. I find that the total amount of the foreign trade of New York for the first-mentioned period was $92,000,000, of which $62,000,000 were carried in American bottoms and $30,000,000 in foreign. This state of things rapidly changed as the war continued, for it appears that for the quarter ending June 30, 1863, the total amount of the foreign trade of New York was $88,000,000, of which amount $23,000,000 were carried in American vessels and $65,000,000 in
[474] foreign, the change *brought about being that while in 1860 two-thirds of the commerce of New York were carried on in American bottoms, in 1863 three-fourths were carried on in foreign bottoms. You see, therefore, what a complete revolution must have taken place in the value of American shipping; and what has been the consequence? That a very large transfer has been made of American shipping to English owners, because the proprietors no longer found it profitable to carry on their business. A document has been laid on the table which gives us some important information on this subject. I refer to an account of the number and tonnage of United States vessels which have been registered in the United Kingdom and in the ports of British North America between the years 1858 and 1863, both inclusive. It shows that the transfer of United States shipping to English capitalists in each of the years comprised in that period was as follows:

"In 1858, vessels 33, tonnage 12,684.
"In 1859, vessels 49, tonnage 21,308.
"In 1860, vessels 41, tonnage 13,638.
"In 1861, vessels 126, tonnage 71,673.
"In 1862, vessels 135, tonnage 64,578.
"In 1863, vessels 348, tonnage 252,579.[2]

[1] Hansard, 3d series, Vol. 175, pp. 496-500; Vol. V, page 589.

[2] In the year 1864 one hundred and six vessels were transferred to the British flag, with an aggregate tonnage of 92,052 tons.

*"I am told that this operation is now going on as fast as ever. [475] Now, I hold this to be the most serious aspect of the question of our relations with America. I care very little about what newspapers may write, or orators may utter, on one side or the other. We may balance off an inflammatory speech from an honorable member here against a similar speech made in the Congress at Washington. We may pair off a leading article published in New York against one published in London; but little consequence, I suspect, would be attached to either. The two countries, I hope, would discount these incendiary articles, or these incendiary harangues, at their proper value. But what I do fear in the relations between these two nations of the same race, is the heaping up of a gigantic material grievance, such as we are now accumulating by the transactions connected with these cruisers; because there is a vast amount of individual suffering, personal wrong, and personal rancor arising out of this matter, and that in a country where popular feeling rules in public affairs. I am not sure that any legislation can meet this question. What with the high rate of insurance, what with these captures, and what with the rapid transfer of tonnage to British capitalists, you have virtually made valueless that vast property. Why, if you had gone and helped *the Con- [476] federates by bombarding all the accessible sea-port towns of America, a few lives might have been lost which, as it is, have not been sacrificed, but you could hardly have done more injury in destroying property than you have done by these few cruisers."

Enhanced rates of insurance.

With the reservations already stated, the United States present the amount, so far as it has come to their knowledge, of the enhanced payments of insurance, caused by the acts of the insurgent cruisers. All of these cruisers came from England; and should the Tribunal find Great Britain responsible for the injuries caused by their acts, it cannot be denied that the war risk was the result of their dispatch from British ports. The amount of this injury, so far as yet known to the United States, appears in Vol. VII.

Prolongation of the War.

It is impossible for the United States to determine, it is perhaps impossible for any one to estimate with accuracy, the vast injury which these cruisers caused in prolonging the war.

The great exertions which were made in the months of April, May, and June, 1863, to secure arms and ammunition for immediate use in Richmond have already been noted. Letter followed letter in rapid succession, urging Walker to forward the desired articles without delay. The energetic measures which Walker took to obtain *coal [477] to enable him to comply with his instructions have been commented on. The insurrection was at that moment gathering itself up for a blow which was intended to be final and decisive.

On the 29th of April in that year Grant, having taken an army past the fortifications of Vicksburg, began the attack upon Grand Gulf, and from that day conducted his operations with such vigor that, by the 21st of May he had defeated the armies of such insurgents in five pitched battles, and had commenced the investment of Vicksburg. In the Atlantic States the fortunes of the United States had been less favorable. The Army of the Potomac under Hooker had met with a decided reverse at Chancellorsville, and was resting inactive after the failure.

The military authories at Richmond, having received the supplies which Walker had forwarded, selected this moment for a blow in Pennsylvania, which was intended at once to relieve Vicksburg, and decide the contest. History tells how utterly they failed. After three days of bloody fighting, Lee retired from Gettysburg discomfited. The same day Grant entered Vicksburg and opened the Mississippi.

The 4th day of July, 1863, saw the aggressive force on land of the insurrection crushed. From that day its only hope lay in pro-
[478] longing a defense *until, by the continuance of the permitted violations of British neutrality by the insurgents, the United States should become involved in a war with Great Britain. The insurgents had, at that time, good reason to look for that result. The Florida, the Alabama, the Georgia had left British ports for the purpose of carrying on war against the United States, and were, nevertheless, received with unusual honors and hospitality in all the colonial ports of Great Britain. Only ten days before the battle of Gettysburg, the judge who presided at the trial of the Alexandra had instructed the jury that no law or duty of Great Britain had been violated in the construction and dispatch of the Alabama. About three months before that time Her Majesty's Government had decided that they would not recommend Parliament to enact a more effective law for the preservation of neutrality. Laird was constructing the rams in Liverpool under the existing interpretation of the law, and the British Government was refusing to interfere with them. The Chancellor of the Exchequer, five days before the battle of Gettysburg, had declared in the House of Commons, speaking not individually, but in the plural, "We do not believe that the restoration of the American Union by force is attainable." Under these circumstances the insurgents made great exertions to keep
[479] the *Florida, the Alabama, and the Georgia afloat, and to stimulate their officers and crews to renewed destruction of the commerce of the United States. They counted, not without reason, upon inflaming popular passion in the United States by the continuance of these acts, until the people should force the Government into a retaliation upon Great Britain, the real author of their woes. In pursuance of this policy they withdrew their military forces within the lines of Richmond, and poured money into Bullock's hands to keep afloat and increase his British-built navy, and to send it into the most distant seas in pursuit of the merchant marine of the United States.

Thus the Tribunal will see that, after the battle of Gettysburg, the offensive operations of the insurgents were conducted only at sea, through the cruisers; and observing that the war was prolonged for that purpose, will be able to determine whether Great Britain ought not, in equity, to reimburse to the United States the expenses thereby entailed upon them.

On all these points evidence is presented which will enable the Tribunal to ascertain and determine the amount of the several losses and injuries complained of. To the amount thus shown should be added interest upon the claims to the day when
[480] the award is payable by the terms of the Treaty, *namely, twelve months after the date of the award. The usual legal rate of interest in the city of New York, where most of the claims of individuals are held, is seven per cent. per annum. In some of the States it is greater; in few of them less. The United States make a claim for interest at that rate. The computation of the interest should be made from an average day to be determined. The United States suggest the 1st day of July, 1863, as the most equitable day.

Interest claimed to the date of payment.

They earnestly hope that the Tribunal will exercise the power conferred upon it to award a sum in gross to be paid by Great Britain to the United States. The injuries of which the United States complain were committed many years since. The original wrongs to the sufferers by the acts of the insurgent cruisers have been increased by the delay in making reparation. It will be

Reasons why a gross sum should be awarded.

unjust to impose further delay, and the expense of presenting claims to another Tribunal, if the evidence which the United States have the honor to present for the consideration of these Arbitrators shall prove to be sufficient to enable them to determine what sum in gross would be a just compensation to the United States for the injuries and losses of which they complain.

Above all it is in the highest interest of the two great Powers which appear at this bar, that the *causes of difference which [481] have been hereinbefore set forth should be speedily and forever set at rest. The United States entertain a confident expectation that Her Majesty's Government will concur with them in this opinion.

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CASE

PRESENTED ON THE PART OF THE

GOVERNMENT OF HER BRITANNIC MAJESTY

TO THE

TRIBUNAL OF ARBITRATION,

CONSTITUTED

UNDER ARTICLE 1 OF THE TREATY CONCLUDED AT WASHINGTON ON THE 8TH MAY, 1871, BETWEEN HER BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

GENERAL CONTENTS.

The case now presented to the arbitrators on the part of the government of Her Britannic Majesty comprehends a statement of the facts which that government regards as material to a just adjudication on the claims of the United States, and of some general propositions on which it intends to rely, believing them to be in accordance with the principles of international law and the practice of nations.

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THE APPENDIX TO THE CASE CONSISTS OF FOUR VOLUMES, THE CONTENTS OF WHICH ARE AS FOLLOWS:

Vol. I. Correspondence relating to the Florida, Alabama, Georgia, and Shenandoah. (*See vol.* I, *pages* 217 *to* 1002 *of this edition.*)

Vol. II. Correspondence relating to the Sumter, Nashville, Georgiana, Phantom Southerner, Alexandra, and other vessels respecting which representations were made by the Government of the United States to that of Her Britannic Majesty during the civil war. (*See vol.* II *of this edition.*)

Vol. III. Papers relating to the commencement of the civil war; proclamations and regulations issued by the governments of Great Britain and other countries during that war; the neutrality laws of the United States and of Great Britain; judgments delivered by the British Court of Exchequer and by the Supreme Court of the United States; correspondence between the Government of the United States and the governments of Spain and Portugal relative to the fitting out of privateers in the ports of the first-named country; and the report of the royal commission appointed to inquire into the character, working, and effect of the British laws for the enforcement of neutrality. (*See vol.* III, *pages* 1 *to* 395, *of this edition.*)

Vol. IV. General correspondence on the "Alabama claims," presented to Parliament. (*See vol.* III, *pages* 397 *to* 965, *of this edition.*)

PART I.

STATEMENT OF THE MATTER REFERRED TO THE ARBITRATORS, AS IT IS UNDERSTOOD BY THE GOVERNMENT OF HER BRITANNIC MAJESTY.

The government of Her Britannic Majesty, in proceeding to state, for the information of the tribunal of arbitration, the facts and arguments which appear material to a just adjudication on the claims to be presented by the Government of the United States, finds it necessary to remark, in the first place, that no definite and complete statement of those claims, with the grounds on which they are founded, has ever been furnished by the latter Government.

A general definition of them is, however, supplied by the terms of the reference to arbitration contained in Articles I to XI of the treaty of Washington, (8th May, 1871,) coupled with the previous correspondence between the two governments.

The parts of the treaty to which Her Britannic Majesty's government particularly refers are the following:

ARTICLE I. Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the Alabama claims: and whereas Her Britannic Majesty has authorized her High Commissioners and Plenipotentiaries to express in a friendly spirit the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels: now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the Alabama claims, shall be referred to a Tribunal of Arbitration, to be composed of five Arbitrators, to be appointed in the following manner:

* * * * * * *

ARTICLE II. The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of Her Britannic Majesty and the United States respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

* * * * * * *

ARTICLE VI. In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:

RULES.

A neutral Government is bound—

First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable grounds to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to

cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly. To exercise due diligence in its own ports or waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot consent to the foregoing rules as a statement of "principles of international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees, that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules. And the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them.

[2]

ARTICLE VII. The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides. It shall be made in writing, and dated, and shall be signed by the Arbitrators who may assent to it. The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfill any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfill any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States at Washington within twelve months after the date of the award.

* * * * * * *

ARTICLE X. In case the Tribunal finds that Great Britain has failed to fulfill any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a board of assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators.

* * * * * * *

ARTICLE XI. The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such board be appointed, as a full, perfect, and final settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and thenceforth inadmissible.

The second of the above "Rules" is understood by Her Majesty's government as prohibiting the use of the ports or waters of the neutral for the renewal or augmentation of military supplies or arms, only when such supplies or arms are for the service of a vessel cruising or carrying on war, or intended to cruise or carry on war, against either belligerent; and as not prohibiting any sale of arms or other military supplies in the ordinary course of commerce; and Her Majesty's government have no reason to believe that it is otherwise understood by the Government of the United States.

The claims, then, which are referred to the tribunal are "claims growing out of the acts of" certain vessels, in respect of which the Government of the United States alleges that Great Britain has failed to fulfill some international duty. The duties specifically mentioned, and to which the attention of the tribunal is directed, are duties to be performed by a "neutral government" as such. As to each vessel separately, the tribunal is to determine whether there has or has not been any failure of duty on the part of Her Majesty's government. If, in the

judgment of the tribunal, there has been such a failure in respect of any specified vessel or vessels, the tribunal may adopt, at its discretion, either of two courses. It may, on the one hand, award such a gross sum as the arbitrators may deem just to be paid by Great Britain, in full satisfaction of all well-founded claims on the part of the United States, "growing out of the acts" of the vessel or vessels in respect of which there has been a failure of duty; or, on the other hand, it may content itself with deciding, as to each or any vessel in respect of which there has been a failure of duty, the measure or extent of the liability which on general principles may justly be deemed to have been incurred by such failure. In the event of the second course being chosen, the office of examining and adjudicating on the validity of particular claims "growing out of the acts" of the specified vessel or vessels, and of fixing the sum or sums of money to be paid on account of each, according to the measure of liability laid down by the tribunal, is remitted to a board of assessors, for constituting which provision is made by Article X.

In effect, therefore, the tribunal is called upon to determine whether, in respect of certain vessels not designated by name, the government of Great Britain, as a neutral power, has made default in the performance of any international obligation due from that power to the United States. Should this question be answered in the affirmative, the tribunal is then to form a judgment on the extent of the liability, if any, incurred by the default, and is either to award a gross sum in satisfaction of all just claims, or to define the general limits of the liability as to each vessel for the guidance of the assessors. The claims which may be presented to the tribunal, and to which alone it is to have regard in *making its award, are claims "growing out of the acts" of the vessels (if any) in respect of which a failure of duty shall be proved.

The vessels to which this inquiry relates are (as has been already remarked) not designated in the treaty by name; they are only indicated by reference to a particular class of claims, to which their "acts" are said to have given rise. These claims are assumed in the treaty to have become familiar to both governments, in the course of the correspondence which has passed between them, under the general title of the "Alabama Claims." They are assumed to form a distinct class, well known, and easily separable from the mass of miscellaneous claims arising from other sources, for which latter a different mode of settlement is provided by Articles XII to XVII of the treaty. The Alabama was a vessel which sailed from the port of Liverpool, under circumstances which will be stated below, and was afterward employed as a cruiser in the naval service of the Confederate States. The phrase "The Alabama claims" is understood by Her Britannic Majesty's government to embrace all claims "growing" (to use the language of the treaty) "out of acts committed by" this vessel, and by other vessels which are alleged to have been procured, like the Alabama, from British ports during the war, and under circumstances more or less similar, and to be confined to such claims. The only vessels in respect of the acts of which claims have been made by the Government of the United States on that of Her Britannic Majesty, either during the civil war or in the six years which have elapsed since its termination, are the Alabama herself, and the vessels formerly known as the Florida, Georgia, and Shenandoah. On one occasion, indeed, since the close of the war, namely, in a dispatch dated 27th August, 1866, and communicated by the minister of the United States to Her Majesty's government, men-

tion was made of a vessel called the Sumter, as one of those in respect of which the Government of the United States conceived itself to have claims against Great Britain. But no claims in respect to the Sumter were in fact included in the detailed list which was inclosed in that dispatch and then presented to Her Britannic Majesty's government, nor have any such claims been presented before or since. Nor is Her Britannic Majesty's government aware of any grounds on which such claims could be made with any show of reason. Her Britannic Majesty's government is, therefore, entitled to assume that the claims referred to the tribunal are claims "growing out of the acts" of the four vessels above named, or of some or one of them.

The circumstances under which these four vessels respectively sailed from British ports, and came into the possession of the government of the Confederate States, and the considerations which the tribunal will be called upon to apply to them respectively, are, as will hereafter be seen, dissimilar in very material respects. Her Britannic Majesty's government, however, maintains that in respect of none of them was there, on its part, any failure in the discharge of international obligations rendering Great Britain justly liable to make reparation to the United States for acts committed by them, or by the persons in whose possession they respectively were, out of the jurisdiction of the British Crown.

For the guidance of the tribunal in adjudicating on the questions submitted to it, three "rules" have been laid down, which, by agreement between the two governments, are to be taken as applicable to the case, and to be reciprocally observed in future by Great Britain and the United States. These rules purport to lay down certain specific obligations incumbent in time of war on neutral powers. By them, and by such principles of international law not inconsistent with them as the tribunal shall determine to have been applicable to the case, the tribunal is to be governed. Her Britannic Majesty's government has declined to give its assent to these rules as a statement of principles of international law which were actually in force at the time when the claims now submitted to arbitration arose. But by Her Britannic Majesty's government, as well as that of the United States, they are believed and intended to be not at variance, but in substantial accord with the general principles of that system by which both powers alike hold themselves bound, which they alike desire to preserve sacred and inviolate, and from the dominion of which neither of them proposes to withdraw the questions that have unhappily arisen between them. Accepting the rules sincerely and without reserve, in the manner expressed in the sixth article of the treaty, Her Britannic Majesty's government will assume (as is, indeed, clearly implied in the terms of that article) that they are to be construed with reference to, and in connection with, that long-established body of international rules and usages which was, and still is, common to Great Britain and the United States with other civilized peoples.

[4]

*PART II.

STATEMENT OF EVENTS WHICH ATTENDED AND FOLLOWED THE COMMENCEMENT OF THE CIVIL WAR AND OF THE COURSE PURSUED IN RELATION TO IT BY GREAT BRITAIN AND OTHER MARITIME POWERS.

Before approaching the cases of the vessels to which the claims in question are understood to relate, it is necessary to state concisely the previous course of events, and to place clearly before the tribunal the course of conduct which had been pursued during the earlier period of the war by Her Britannic Majesty's government. PART II.—Introductory statement.

GENERAL PROPOSITIONS.

The following propositions are believed by Her Majesty's government to be in accordance with the principles of international law and the practice of nations:

1. It is the duty of a neutral government, in all matters relating to the war, to act impartially toward the belligerent powers; to concede to one what it concedes to the other; to refuse to one what it refuses to the other.

2. This duty, inasmuch as it flows directly from the conception of neutrality, attends the relation of neutrality wherever it exists, and is not affected by considerations arising from the political relation which before the war the belligerents may have sustained to one another.

3. Maritime war being carried on by hostilities on the high seas, and through the instrumentality (ordinarily) of vessels commissioned by public authority, a neutral power is bound to recognize, in matters relating to the war, commissions issued by each belligerent, and captures made by each, to the same extent and under the same conditions as it recognizes commissions issued and captures made by the other.

4. Where either belligerent is a community or body of persons not recognized by the neutral power as constituting a sovereign state, commissions issued by such belligerent are recognized as acts emanating, not indeed from a sovereign government, but from a person or persons exercising *de facto*, in relation to the war, the powers of a sovereign government.

THE CIVIL WAR.

In the year 1861 a civil war broke out in the United States. Seven States—South Carolina, Florida, Mississippi, Alabama, Georgia, Louisiana, and Texas—had one by one formally renounced their allegiance to the Union and declared themselves independent. They had formed themselves into a separate confederation, under the title of the "Confederate States of North America;" had adopted a federal constitution, instituted a federal legislature, executive, and judiciary; taken measures

to raise an army of 100,000 men, and appropriated sums of money amounting to $2,029,485 (equal to more than 10,000,000 francs) toward the creation of a navy. This series of events commenced in November, 1860, and was completed before the end of March, 1861, at which time the confederate legislature had been for more than a month in session. In April, 1861, hostilities commenced between the Government of the Union and the Confederated States of the South; and shortly afterward four other States—Virginia, North Carolina, Tennessee, and Arkansas—likewise separated themselves from the Union and joined the confederacy, which thus embraced a vast and compact territory, extending from the river Potomac to the confines of the republic of Mexico.

The war began with the attack and bombardment by the confederates of Fort Sumter, a fort situate at the mouth of Charleston Harbor, and held by a small garrison of United States troops. On the reduction of this place, which was speedily effected, followed within a few days the seizure, by Virginian militia, of Harper's Ferry, an important military arsenal at the confluence of the rivers Shenandoah and Potomac, and of the great naval arsenal and ship-building yards of Norfolk, where the James River discharges itself into Chesapeake Bay. Fort Sumter
[5] surrendered on the 13th April. On the 15th the *President of the United States issued a proclamation calling out militia to the number of 75,000 men.[1] On the 17th Mr. Jefferson Davis (who had been elected in February to the office of President of the Confederate States) published a counter-proclamation, inviting applications for letters of marque and reprisal to be granted under the seal of the Confederate States against ships and property of the United States and their citizens.[2] By a further proclamation, dated the 19th April, President Lincoln, after referring to the proposed issue of letters of marque, declared that he had deemed it advisable to set on foot a blockade of the ports within the seven States then in revolt, "in pursuance of the laws of the United States and of the law of nations in such case provided."[3]

For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave any of the said ports, she will be duly warned by the commander of one of the said blockading vessels, who will indorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as prize as may be deemed advisable.

By another proclamation, dated the 27th April,[4] the blockade was declared to be extended to the ports of Northern Virginia.

On the publication of these proclamations, Lord Lyons, then Her Britannic Majesty's envoy at Washington, requested of the Government of the United States that he might be furnished, for the guidance of British merchants, with definite information as to the manner in which the blockade was to be enforced. He was assured, in reply, by Mr. Seward, then United States Secretary of State, that it would be conducted as strictly according to the recognized rules of public law, and with as much liberality toward neutrals, as any blockade ever was by a belligerent.[5]

To the minister of the Queen of Spain, Mr. Seward wrote as follows:

SIR: In acknowledging the receipt of your note of the 30th ultimo, on the subject of the blockade of the ports in several of the States, I deem it proper to state for your further information:

[1] Appendix, vol. iii, p. 2.
[2] Ibid., p. 4.
[3] Ibid., p. 6.
[4] Ibid., p. 9.
[5] Ibid., pp. 10, 11.

1. That the blockade will be strictly enforced upon the principles recognized by the law of nations.
2. That armed vessels of neutral states will have the right to enter and depart from the interdicted ports.
3. That merchant-vessels in port at the time the blockade took effect will be allowed a reasonable time for departure.

I avail, &c.,
(Signed) W. H. SEWARD.

The blockade declared by the foregoing proclamations was actually instituted, as to the ports within the State of Virginia, on the 30th April;[1] and was extended to the principal ports on the sea-board of the other Confederate States before the end of May. A considerable number of neutral ships and cargoes were captured for breaches or alleged breaches of blockade, some at or near the mouths of blockaded ports, others on the high seas. Vessels or cargoes so captured were carried before, and condemned by, courts of the United States exercising jurisdiction in matters of prize; and the validity of the sentences thus pronounced was upheld by the Supreme Court of the United States, which is the highest court of appeal in such matters. Mr. Justice Grier, in delivering the judgment of the court on this question, said:

To legitimate the capture of a neutral vessel or property on the high seas, a war must exist *de facto*, and the neutral must have a knowledge or notice of the intention of one of the parties belligerent to use this mode of coercion against a port, city, or territory in possession of the other.

In a subsequent part of the same judgment he added:

Whether the President, in fulfilling his duties as commander-in-chief in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided by him; and this court must be governed by the decisions and acts of the political department of the Government to which this power was intrusted. He must determine what degree of force the crisis demands. The proclamation of the blockade is itself official and conclusive evidence to the court that a state of war existed which demanded and authorized a recourse to such a measure under the circumstances peculiar to the case. The correspondence of Lord Lyons with the Secretary of State admits the fact, and concludes the question.

[6] *On the 3d May, 1861, President Lincoln directed that the naval force of the United States should be increased by the enlistment of 18,000 additional seamen, and their land forces by fifty additional regiments, partly of regular troops and partly of volunteers, with an aggregate maximum of 64,748 men.

It is needless to refer particularly to the subsequent history of the war waged on the American continent. It is well known that the forces of the United States, attempting to penetrate into Virginia, encountered a severe defeat; that great armies were raised on both sides; that hostilities were carried on over an immense area, with varying fortune, for nearly four years; and that the contest terminated, in 1865, in the complete reconquest of the eleven Confederated States, which, after being held for a considerable time under military control, were finally re-admitted to their original position in the Union.

The events stated above are matters of general notoriety, recorded in the history of the period.

On the 30th April, 1861, Mr. Jefferson Davis, as President of the Confederated States, addressed to the congress of those States a message, which contained the following passage:

The operations of the navy department have been necessarily restricted by the fact that sufficient time has not yet elapsed for the purchase or construction of more than

[1] Appendix, vol. iii, p. 10.

a limited number of vessels adapted for the public service. Two vessels have been prepared and manned, the Sumter and McRae, and are now being prepared for sea at New-Orleans with all possible dispatch.

On the 1st May, 1861, Mr. Seward, Secretary of State of the United States, addressed to the British Minister at Washington a dispatch of that date, which contained the following passage :[1]

The so-called Confederate States have waged an insurrectionary war against this Government. They are buying, and even seizing, vessels in several places for the purpose of furnishing themselves with a naval force, and they are issuing letters of marque to privateers to be employed in preying on the commerce of this country. You are aware that the President has proclaimed a blockade of the ports, included within the insurgent States. All these circumstances are known to the world.

On the 6th May, 1861, the congress of the Confederate States passed an act entitled "An act recognizing the existence of war between the United States and the Confederate States, and concerning letters of marque, prizes, and prize-goods."[2] The first section of this act was as follows:

The congress of the Confederate States of America do enact that the president of the Confederate States is hereby authorized to use the whole land and naval force of the Confederate States to meet the war thus commenced, and to issue to private vessels commissions or letters of marque and general reprisal, in such form as he shall think proper, under the seal of the Confederate States, against the vessels, goods, and effects of the United States, and of the citizens or inhabitants of the States and Territories thereof; provided, however, that property of the enemy (unless it be contraband of war) laden on board a neutral vessel, shall not be subject to seizure under this act: and provided further, that vessels of the citizens or inhabitants of the United States now in the ports of the Confederate States, except such as have been since the 5th April last, or may hereafter be in the service of the Government of the United States, shall be allowed thirty days after the publication of this act to leave said ports and reach their destination; and such vessels and their cargoes, excepting articles contraband of war, shall not be subject to capture under this act during said period, unless they shall have previously reached the destination for which they were bound on leaving said ports.

The act then proceeded to lay down in detail regulations as to the conditions on which letters of marque should be granted to private vessels, and the conduct and behavior of the officers and crews of such vessels, and the disposal of prizes made by them, similar to the regulations which have been ordinarily prescribed and enforced with respect to privateers in the United States and by the maritime powers of Europe.

The fourth and seventh sections were as follows:

4. That, before any commission or letters of marque and reprisal shall be issued as aforesaid, the owner or owners of the ship or vessel for which the same shall be requested, and the commander thereof for the time being, shall give bond to the Confederate States, with at least two responsible sureties not interested in such vessel, in the penal sum of $5,000, or, if such vessel be provided with more than 150 men, then in the penal sum of $10,000, with condition that the owners, officers, and crew who shall be employed on board such commissioned vessel shall and will observe the laws of the Confederate States, and the instructions which shall be given them according to law for the regulation of their conduct, and will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof by such vessel during her commission, and to deliver up the same when revoked by the president of the Confederate States.

7. That before breaking bulk of any vessel which shall be captured as aforesaid, or other disposal or conversion thereof, or of any articles which shall be found on board the same, such captured vessel, * goods, or effects, shall be brought into some port of the
[7] Confederate States, or of a nation or State in amity with the Confederate States, and shall be proceeded against before a competent tribunal; and after condemnation and forfeiture thereof shall belong to the owners, officers, and crew of the vessel capturing the same, and be distributed as before provided; and in the case of all captured vessels, goods, and effects which shall be brought within the jurisdiction of the Confed-

[1] Appendix, vol. iii, p. 12. [2] Ibid., p. 13.

erate States, the district courts of the Confederate States shall have exclusive original cognizance thereof, as the civil causes of admiralty and maritime jurisdiction; and the said courts, or the courts being courts of the Confederate States into which such cases shall be removed, in which they shall be finally decided, shall and may decree restitution in whole or in part, when the capture shall have been made without just cause. And, if made without probable cause, may order and decree damages and costs to the party injured, for which the owners and commanders of the vessels making such captures, and also the vessels, shall be liable.

A further act, entitled "An act regulating the sale of prizes and the distribution thereof," was likewise passed by the Congress of the Confederate States on the 14th of May, 1861.[1]

Many persons who had served as officers in the Navy of the United States offered themselves for employment in the naval service of the Confederate States, and those for whom employment could be found were received and employed in such service.

In and soon after the month of May, 1861, a number of armed ships, mostly of small tonnage, were fitted out in and sent to sea from ports in the Confederate States, and a considerable number of captures were made by them. Some of these were commissioned as public ships of war of the Confederate States, and commanded by officers in the naval service of the confederacy; others as private ships of war or privateers. Among the armed vessels which were so fitted out and made prizes were the Calhoun, a steamer of upwards of 1,000 tons, sent to sea in May, 1861; the Jeff. Davis, Savannah, St. Nicholas, Winslow, and York. More than twenty prizes were made by these vessels. The Sumter (to which reference will be made hereafter) went to sea in June, 1861; the Sallie and Nashville in October, 1861; the Echo in 1862; the Retribution and Boston in 1863; the Chickamauga, Olustee, and Tallahassee in 1864. These vessels are said to have taken from sixty to seventy prizes.

It appears from an official report of the Secretary of the Navy of the United States that the number of vessels captured and destroyed by vessels of the United States during the war, for breach of blockade or in battle, exceeded 1,200.

NEUTRALITY OF THE MARITIME POWERS.

The maritime powers, on receiving information of the outbreak of the war, resolved to maintain a strict and impartial neutrality in their relations with the belligerents, holding that it did not belong to them, as governments, to decide on the questions which had unhappily divided the American people, nor to take any part in the contest on which the future of the American Commonwealth appeared to depend.

Of all the nations of the world, Great Britain, by reason of her geographical position, the activity of her manufacturing and trading industries, her vast commerce with America, the extent and number of her transatlantic possessions, the magnitude of her military and commercial marine, and its dispersion, not only over the seas bordering on the American coast but over every part of the world, was the power most immediately and profoundly affected by a civil war in the United States. The European power which, after Great Britain, possessed the largest marine was France.

On the 14th May, 1861, Her Britannic Majesty's government issued the following proclamation, intended for the information of the officers of the government and of British subjects in general: [2]

VICTORIA R.

Whereas we are happily at peace with all sovereigns, powers, and states;
And whereas hostilities have unhappily commenced between the Government of the

[1] Appendix, vol. iii, p. 15.

[2] Ibid., p. 17.

United States of America and certain States styling themselves the Confederate States of America;

And whereas we, being at peace with the Government of the United States, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties;

We therefore have thought fit, by and with the advice of our privy council, to issue this our royal proclamation.

And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George III, entitled "An act to prevent enlisting or engage-
[8] ment of His Majesty's subjects *to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license," it is among other things declared and enacted as follows:

"That if any natural-born subject of His Majesty, his heirs and successors, without the leave or license of His Majesty, his heirs or successors, for that purpose first had and obtained, under the sign manual of His Majesty, his heirs or successors, or signified by order in council, or by proclamation of His Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the service of, or for, or under, or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of His Majesty shall, without such leave or license as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed, or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used, for any warlike purpose, in the service of, or for, or under, or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of His Majesty shall, without such leave and license as aforesaid, engage, contract, or agree to go, or shall go, to any foreign state, country, colony, province or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of, or for, or under, or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of, or for, or under, or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor or marine in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavor to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employments as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for, or under, or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for, or under, or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go, or to agree to go, or embark from any part of His Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not: in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

And it is in and by the said act further enacted:

"That if any person within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty

for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming, of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof upon any information or indictment, be punishable by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted: and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's customs or excise, or any officer of His Majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of His Majesty's customs or excise and the officers of His Majesty's navy are empowered
[9] respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation."

And it is in and by the said act further enacted:

"That if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting, the warlike force of any ship or vessel of war, or cruiser, or other armed vessel which at the time of her arrival in any part of the United Kingdom, or any of His Majesty's dominions, was a ship of war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise the powers of government, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof upon any information or indictment, be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command, that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do hereby further warn all our loving subjects, and persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral sovereign in the said contest, or in violation or contravention of the law of nations in that behalf; as, for example, and more especially, by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any ship or vessel of war or transport of, or in the service of, either of the said contending parties; or by serving as officers, sailors, or marines on board any privateer bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas with intent to

enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport by either of the said contending parties; or by breaking or endeavoring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties; or by carrying officers, soldiers, dispatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law of modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced.

And we do hereby declare, that all our subjects, and persons entitled to our protection, who may misconduct themselves in the premises, will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from us against any liabilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our court at the White Lodge, Richmond Park, this 13th day of May, in the year of our Lord 1861, and in the 24th of our reign.

This proclamation was published fourteen days after the receipt in London of the news that Fort Sumter had been reduced by bombardment, that the President of the United States had called out 75,000 men, and that Mr. Jefferson Davis had taken measures for issuing letters of marque;[1] twelve days after receipt of intelligence that President Lincoln had published a proclamation of blockade;[2] nine days after a copy of that proclamation had been received from Her Britannic Majesty's consul at New York;[3] and three days after the same proclamation had been officially communicated to Her Majesty's secretary of state for foreign affairs by the United States minister, Mr. Dallas.[4]

On the 1st June, 1861, Her Britannic Majesty's government issued orders by which the armed ships of both belligerents, whether public ships of war or privateers, were interdicted from carrying prizes made by them into the ports, harbors, roadsteads, or waters of the United Kingdom, or of any of Her Majesty's colonies or possessions abroad.[5]

The government of the Confederate States remonstrated warmly against these orders, as practically unequal in their operation, and unduly disadvantageous to the belligerent whose ports were blockaded. The Secretary of State of the United States expressed his satisfaction with them, as likely to "prove a death-blow to southern privateering."

[10] *These orders were strictly enforced throughout the whole period of the war, and no armed vessel was suffered to bring prizes into any British port.

On the 10th June, 1861, the government of the Emperor of the French issued a declaration, which was as follows:[6]

PARIS, *le* 10 *juin*, 1861.

Le ministre des affaires étrangères a soumis à l'empereur la déclaration suivante, que sa majesté a revêtue de son approbation:

DÉCLARATION.

Sa majesté l'empereur des Français, prenant en considération l'état de paix qui existe entre la France et les États-Unis d'Amérique, a résolu de maintenir une stricte neutralité dans la lutte engagée entre le gouvernement de l'union et les états qui prétendent former une confédération particulière.

En conséquence, sa majesté, vu l'article 14 de l'ordonnance de la marine du mois d'août 1861, l'article 3 de la loi du 10 avril 1825, les articles 84 et 85 du code pénal.

[1] Appendix, vol. iii, pp. 2 and 3.
[2] "Times" and "Daily News" of May 2, 1861.
[3] Appendix, vol. iii, p. 4.
[4] Ibid., p. 7.
[5] Ibid., p. 18.
[6] Ibid., p. 22.

65 et suivants du décret du 24 mars 1852, 313 et suivants du code pénal maritime, et l'article 21 du code Napoléon ;

Déclare :

1. Il ne sera permis à aucun navire du guerre ou corsaire de l'un ou l'autre des belligérants d'entrer et de séjourner avec des prises dans nos ports ou rades pendant plus de vingt-quatre heures, hors le cas de relâche forcée.

2. Aucune vente d'objets provenant de prises ne pourra avoir lieu dans nos dits ports ou rades.

3. Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire la course maritime, ou de concourir d'une manière quelconque à l'équipement ou l'armement d'un navire de guerre ou corsaire de l'une des deux parties.

4. Il est également interdit à tout Français, résidant en France ou à l'étranger, de s'enrôler ou prendre du service, soit dans l'armée de terre, soit à bord des bâtiments de guerre ou des corsaires de l'un ou de l'autre des belligérants.

5. Les Français résidant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties, et contraire à la neutralité que nous avons résolu d'observer.

Les contrevenants aux défenses et recommendation contenues dans la présente déclaration seront poursuivis, s'il y a lieu, conformément aux dispositions de la loi du 10 avril 1825, et aux articles 84 et 85 du code pénal, sans préjudice de l'application qu'il pourrait y avoir lieu de faire aux dits contrevenants des dispositions de l'article 21 du code Napoléon, et des article 65 et suivants du décret du 24 mars 1825, sur la marine marchande, 313 et suivants du code pénal pour l'armée de mer.

Sa majesté déclare, en outre, que tout Français qui ne se sera pas conformé aux présentes prescriptions ne pourra prétendre à aucune protection de son gouvernement contre les actes ou mesures, quels qu'ils soient, que les belligérants pourraient exercer ou décréter.

NAPOLÉON.

Le ministre des affaires étrangères,
E. THOUVENEL.

A decree, of which a translation is subjoined, was on the 17th June, 1861, issued by the government of the Queen of Spain :[1]

[Translation.]

PALACE, *June* 17, 1861.

Taking into consideration the relations which exist between Spain and the United States of America, and the desirability that the reciprocal sentiments of good understanding should not be changed by reason of the grave events which have taken place in that republic, I have resolved to maintain the most strict neutrality in the contest begun between the Federal States of the Union and the States federated at the South; and in order to avoid the damage which might accrue to my subjects and to navigation and commerce, from the want of clear provisions to which to adjust their conduct, I do decree the following :

ARTICLE 1. It is forbidden in all the ports of the monarchy to arm, provide, or equip any privateer vessel, whatever may be the flag she displays.

ART. 2. It is forbidden in like manner to the owners, masters, or captains of merchant-vessels to accept letters of marque, or contribute in any way whatsoever to the armament or equipment of vessels of war or privateers.

ART. 3. It is forbidden to vessels of war or privateers with their prizes, to enter or to remain for more than twenty-four hours in the ports of the monarchy, except in case of stress of weather. Whenever this last shall occur, the authorities will keep watch over the vessel, and oblige her to go out to sea as soon as possible, without permitting her to take in any stores except those strictly necessary for the moment, but in no case arms nor supplies for war.

ART. 4. Articles proceeding from prizes shall not be sold in the ports of the monarchy.

ART. 5. The transportation under the Spanish flag of all articles of commerce is guaranteed, except when they are directed to blockaded ports. The transportation of effects of war is forbidden, as well as the carrying of papers or communications for belligerents. Transgressors shall be responsible for their acts, and shall have no right to the protection of my government.

ART. 6. It is forbidden to all Spaniards to enlist in the belligerent armies, or take service on board of vessels of war or privateers.

[11] *ART. 7. My subjects will abstain from every act which, in violation of the laws of the kingdom, can be considered as contrary to neutrality.

[1] Appendix, vol. iii, p. 22.

ART. 8. Those who violate the foregoing provisions shall have no right to the protection of my government, shall suffer the consequences of the measures which the belligerents may dictate, and shall be punished according to the laws of Spain.

SIGNED WITH THE ROYAL HAND.

The Minister of State,
SATURNINO CALDERON COLLANTES.

The following public notifications were, previously to the 16th June, 1861, issued by the government of the King of the Netherlands:[1]

[Translation.]

THE HAGUE.

In obedience to the King's orders, the ministers for foreign affairs, of justice, and of the marine, present to the knowledge of all whom it may concern, that to guard against probable difficulties during the doubtful complications in the United States of North America, no privateers under any flag, or provided with any commission or letters of marque, or their prizes, shall be admitted into our havens or sea-ports, unless in case of distress, and that requisite orders be issued that under any circumstances such privateers and their prizes be required to go again to sea as speedily as possible.

The ministers above named.

[Translation.]

THE HAGUE.

The minister for foreign affairs and the minister of justice, by the King's authority, warn, by these presents, all inhabitants of the kingdom, that during the existing disturbances in the United States of America they in nowise take part in privateering, because the Netherlands government has acceded to the declaration upon maritime rights set forth by the Paris conference of 1856, whereby, among other matters, privateering is abolished, and no recognition of commissions obtained for letters of marque is permitted. Also that commissions and letters of marque, in conflict with the aforesaid prohibition, which may be issued to inhabitants of the Netherlands, cannot have legal effect in behalf of the King's subjects, or of any abroad who are in subjection to the laws of the kingdom. Those who, under such circumstances, engage in privateering or lend their aid in it to others, will be considered as pirates, and prosecuted according to law in the Netherlands, and subjected to the punishment provided for the commission of such offenses.

The ministers above named.

[Translation.]

THE HAGUE, *June*, 1861.

The minister for foreign affairs, apprised by a communication from the minister of marine that the King had authorized the naval force in the West Indies to be seasonably strengthened by His Majesty's steam-frigate Zealand and the screw propellers Dyambi and Vesuvius, for the purpose of giving protection to the trade and navigation of the Netherlands during the contest which seems to be in existence in the United States of North America, wherever it may be desired, accordingly esteems it to be his duty to direct the attention of shipmasters, consignees, and freighters to the peril to which their insurance against loss will be exposed by any violation of the obligations imposed on neutral powers to respect actual blockades, and not to carry contraband of war, or dispatches of belligerents.

In these cases they will be subject to all the resulting losses that may follow, without the benefit of any protection or intervention on the part of His Majesty's government. Of which take notice.

The minister above named.

The government of the Emperor of Brazil issued the following circular, addressed to the presidents of provinces within the Brazilian Empire:[2]

Circular to the presidents of provinces.

[Translation.]

RIO DE JANEIRO, MINISTRY OF FOREIGN AFFAIRS,
August 1, 1861.

ILLUSTRIOUS AND EXCELLENT SIR: The strife that has broken out between the Federal Government of the United States of North America and some of those States which have declared themselves constituted as a separate confederation, may produce

[1] Appendix, vol. iii, p. 27. [2] Ibid., p. 24.

questions for our country, for the solution of which it is important that your excellency should be prepared; and I have, therefore, received orders from His Majesty the Emperor to declare to your excellency that the imperial government considers that it ought to maintain itself in the most strict neutrality during the war in which those States are unhappily engaged; and in order that that neutrality may be preserved, it is fitting that the following determinations be observed:

The Confederate States have no recognized existence; but, having constituted a distinct government *de facto*, the imperial government cannot consider their naval armaments as acts of piracy, nor refuse them, with the necessary restrictions, the character of belligerents which they have assumed.

In conformity with this, Brazilian subjects are to abstain from all participation and aid in favor of one of the belligerents, and they must not take part in any acts which can be considered as hostile to one of the two parties, and contrary to the obligations of the neutrality.

The exportation of warlike articles from the ports of the empire for the new Confederate States is absolutely prohibited, whether it is intended to be done under the Brazilian flag or that of another nation.

[12] The same trade in contraband of war must be forbidden to Brazilian ships, although they may be destined for the ports subject to the government of the North American Union.

No ship with the flag of one of the belligerents, and which may be employed in this war, or intended for it, can be provisioned, equipped, or armed in the ports of the empire; the furnishing of victuals and naval provisions indispensable for the continuation of the voyage not being included in this prohibition.

No ship of war or cruiser shall be allowed to enter and remain with prizes in our ports or bays more than twenty-four hours, except in case of forced arrival, and they shall in no way be allowed to dispose of the said prizes, or of objects coming from them.

In the execution of these measures, and in the solution of the questions which may arise, your excellency will be guided by the principles of international law, keeping in mind the instructions issued by this ministry on the 18th of May, 1854, retaining the purport of the circular of the 30th of July, 1859, relative to the United States at strife with the Confederate States; and you will communicate to the imperial government any difficulties or extraordinary occurrences that require fresh instructions.

I repeat, &c.

BENVENUTO AUGUSTO DE MAGALHAES TAQUES.

To his Excellency the PRESIDENT *of the Province of* ———.

Declarations, decrees, or notifications were likewise issued by other maritime powers.

THE SUMTER.

Of the armed ships sent to sea by the Confederate States during the first year of the war, two only, the Sumter and Nashville, entered any port belonging to a European power. It is necessary to state briefly the circumstances which occurred in relation to these vessels.

The Sumter was a steamship which had been purchased by the navy department of the government of the Confederate States, was commissioned as a public ship of war in the service of those States, and was commanded by an officer who had previously held a commission in the Navy of the United States. It appears from the message of Mr. Jefferson Davis, dated 29th April, 1861, and hereinbefore referred to, that she had at that date been purchased and manned, and was being actively prepared for sea. She sailed from the Mississippi River on the 30th June, 1861, cruised for six months, and captured seventeen prizes.

In the course of this cruise she entered (in the order herein named) ports within the dominions of the following sovereigns and states, namely, the Queen of Spain, the King of the Netherlands, the republic of Venezuela, the Queen of Great Britain, the Emperor of Brazil, and the Emperor of the French. She obtained coal and supplies in the ports of Cienfuegos, Curaçoa, Paramaribo, Trinidad, and Martinique successively.

At the time of her arrival at Cienfuegos she had with her six prizes, captured since her departure from New Orleans, and these she left

behind her in harbor when she sailed. The Government of the United States complained to the Spanish government of the admission of the Sumter into port, and of her having been permitted to take in coal and water; and demanded that the prizes should be released, on the ground that the capturing vessel was a pirate. The Spanish government did not assent to the demand that the Sumter should be treated as a pirate; but the prizes which she had left in port were set at liberty by order of the captain-general of the island, on the ground that they were proved, on examination, to have been captured within the territorial waters of Cuba, under unlawful circumstances.

The Sumter approached the port of St. Anne's, Curaçoa, on the 15th July, hoisted the flag of the Confederate States, and requested permission to enter. The governor of the island withheld this permission until assured that she was not a privateer, the regulations issued by the government of the Netherlands prohibiting the admission of privateers unless in case of distress, but granted it upon receiving from her commander a declaration in writing that the "Sumter was a ship of war duly commissioned by the government of the Confederate States." In accepting this declaration as sufficient, without further proof, he acted upon the unanimous advice of his colonial council. The Sumter remained eight days in port, and took in coal.

With reference to these facts the Government of the United States, on the 15th of August, 1861, addressed to the government of the Netherlands a complaint and a demand for reparation.[1] The latter government answered that it had faithfully fulfilled its duty as a neutral power, and would continue to adhere to it in future. In the dispatch conveying this answer the following propositions (among others) were laid down and affirmed by the government of the Netherlands:[2]

[13] *1. According to the principles of the law of nations, all nations, without exception, may admit vessels of war belonging to a belligerent state to their ports, and accord to them all the favors which constitute an asylum.

2. As evidence that the Sumter was not a privateer, the governor of Curaçoa was bound to be satisfied with the word of her commander given in writing, and had no right to demand further proofs.

3. The Sumter was not, however, in fact a privateer, not being the property of private owners. She was a ship of war.

4. It cannot be admitted that all vessels carrying the confederate flag should, as contended by the Government of the United States, be considered as privateers; because the principles of the law of nations, as well as the examples of history, require that the rights of war should be accorded to those States.

5. Much less can these vessels be regarded as pirates, or "engaged," in the words of the American Secretary of State, "in a piratical expedition against the commerce of the United States." This would be incompatible with neutrality.

Adhering to these principles the government of the Netherlands recognized, at the same time, that it is the duty of a neutral state to take care that vessels of the belligerent parties commit no act of hostility within the limits of its territory, and do not keep watch in the ports of its dominion to attack from them vessels of the enemy; and it informed the Government of the United States that instructions on this head would be sent to the governors of the King's colonial possessions.

Subsequently to this correspondence, and on the 19th of August, 1861,

[1] Appendix, vol. ii, p. 725.

[2] Ibid., p. 730.

the Sumter was admitted into the port of Paramaribo, in Dutch Guiana, and coaled there, remaining in port eleven days.[1]

The government of the Netherlands shortly afterwards issued orders to the authorities in its colonial possessions to the effect that no vessel of either belligerent should be allowed to take in more coal than would be sufficient for twenty-four hours' consumption, or to remain in port during a longer period than forty-eight hours.[2]

Before arriving at Paramaribo the Sumter had visited Puerto Cabello, in Venezuela, and the British island of Trinidad. She remained in port, at the latter place, during six days, and purchased from private merchants coal and provisions. Her commander had applied for permission to purchase coal from the government stores; but this had been refused by the governor.

With reference to these facts the subjoined correspondence passed between the Government of the United States, through its minister in London (Mr. Adams) and the government of Her Britannic Majesty:

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES, *September* 30, 1861.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, regrets to be obliged to inform the right honorable Earl Russell, Her Majesty's principal secretary of state for foreign affairs, that he has been instructed by the President of the United States to prefer a complaint against the authorities of the island of Trinidad for a violation of Her Majesty's proclamation of neutrality, by giving aid and encouragement to the insurgents of the United States. It appears by an extract from a letter received at the Department of State from a gentleman believed to be worthy of credit, a resident of Trinidad, Mr. Francis Bernard, a copy of which is submitted herewith, that a steam-vessel known as an armed insurgent privateer, called the Sumter, was received on the 30th of July last at that port, and was permitted to remain for six days, during which time she was not only furnished with all necessary supplies for the continuance of her cruise, under the sanction of the attorney-general, but that Her Majesty's flag was actually hoisted on the government flag-staff in acknowledgment of her arrival.

The undersigned has been directed by his Government to bring this extraordinary proceeding to the attention of Lord Russell, and, in case it should not be satisfactorily explained, to ask for the adoption of such measures as shall insure, on the part of the authorities of the island, the prevention of all occurrences of the kind during the continuance of the difficulties in America.

The undersigned deems it proper to add, in explanation of the absence of any official representation from Trinidad to substantiate the present complaint, that there was no consul of the United States there at the time of the arrival of the vessel. The undersigned had the honor, a few days since, to apprise Lord Russell of the fact that this deficiency had been since supplied by preferring an application for Her Majesty's *exequatur* for a new consul, who is already on his way to occupy his post.

The undersigned, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[14] [Inclosure.]

Mr. Bernard to Mr. Seward.

[Extract.]

TRINIDAD, *August* 7, 1861.

SIR: I beg to inform you that on the 30th ultimo a steam sloop of war (Semmes commander) carrying a secession flag, five guns, some of a large caliber, and a crew of from 120 to 150 men, sailed boldly into our harbor, and reported herself to the authorities of this island as being on a cruise. She was last from Puerto Cabello; and since she succeeded in getting out of the Mississippi River she has already captured no less than eleven American vessels. I have ascertained the names of some of them, viz: the Joseph Maxwell, Abe Bradford, Minnie Miller, West Wind, of Westerly, with a cargo of sugar from Havana, and Golden Rocket, which was burnt by her off the coast of Cuba.

[1] Appendix, vol. ii, p. 734. [2] Ibid., p. 737. [3] Ibid., p. 3.

The Sumter landed eight of her prisoners here in a destitute condition; but a contribution has been raised here for their benefit, sufficient to supply their immediate wants, and I will take care that they are provided for until an opportunity offers to ship them to the States.

The Sumter remained here till the 5th instant, and was allowed to supply herself with coals and other necessary outfits. The British flag was hoisted on the government flag-staff for her arrival, and the officers of the British war vessel Cadmus appeared to be on amicable terms with those of the Sumter. The merchant who supplied the Sumter with coals did it with the consent and approval of our attorney-general.

Being a loyal American, I consider it my duty to send you these informations, as there has been no consul of our nation in this island for many months.

I am, &c.,

(Signed) FRANCIS BERNARD.

Earl Russell to Mr. Adams.[1]

FOREIGN OFFICE, *October* 4, 1861.

The undersigned, Her Majesty's principal secretary of state for foreign affairs, has had the honor to receive a complaint from Mr. Adams, envoy extraordinary and minister plenipotentiary of the United States at this court, against the authorities of the island of Trinidad for a violation of Her Majesty's proclamation of neutrality, by giving aid and encouragement to the insurgents of the United States.

It appears, from the accounts received at the Colonial Office, and at the Admiralty, that a vessel bearing a secession flag entered the port of Trinidad on the 30th of July last.

Captain Hillyar, of Her Majesty's ship Cadmus, having sent a boat to ascertain her nationality, the commanding officer showed a commission signed by Mr. Jefferson Davis, calling himself the President of the so-styled Confederate States.

The Sumter, which was the vessel in question, was allowed to stay six days at Trinidad, and to supply herself with coals and provisions: and the attorney-general of the island perceived no illegality in these proceedings.

The law-officers of the Crown have reported that the conduct of the governor was in conformity to Her Majesty's proclamation.

No mention is made by the governor of his hoisting the British flag on the government flag-staff; and if he did so, it was probably in order to show the national character of the island, and not in acknowledgment of the arrival of the Sumter.

There does not appear, therefore, any reason to believe that Her Majesty's proclamation of neutrality has been violated by the governor of Trinidad, or by the commanding officer of Her Majesty's ship Cadmus.

The undersigned, &c.

(Signed) RUSSELL.

The Government of the United States instructed Mr. Adams to inform the government of Great Britain "that the President deeply regrets that Lord Russell is altogether unable to give to our complaint a satisfactory solution." The reason alleged for this expression of dissatisfaction was the same which had been previously rejected by the government of the Netherlands; namely, that the Sumter was a piratical vessel, and that her officers and crew were pirates, and that they ought to be treated as such in foreign ports and waters.

Further communications on the subject subsequently passed between the two governments. These communications are stated in the subjoined dispatches, addressed respectively by Her Britannic Majesty's minister at Washington to Her Majesty's secretary of state for foreign affairs, and by the minister of the United States in London to the Secretary of State of the United States:

Lord Lyons to Earl Russell.

WASHINGTON, *November* 4, 1861.

MY LORD: Mr. Seward spoke to me, the day before yesterday, respecting the admission of the confederate vessel Sumter into British and Dutch ports.

With regard to the Dutch government, Mr. Seward said that he had been obliged to

[1] Appendix, vol. ii, p. 5.

[15] cause very serious remonstrances to be addressed to them, but that he had now been informed that they had given orders that the Southern privateers should not be allowed to remain more than twenty-four hours in a Dutch port. It was true, he said, that it had been declared that these orders had not been issued in deference to the representations of the United States Government, but this was immaterial; so long as the privateers were excluded in practice, he did not care to inquire on what ground that was done.

Mr. Seward then mentioned the reception of the Sumter at Trinidad, and alluded to your lordship's note to Mr. Adams of the 4th of October on the subject. He said he had been obliged to send immediately instructions to Mr. Adams with regard to that note. He did not tell me the nature of those instructions, but he spoke to me of the affair in a tone of complaint, and dwelt especially on the length of time during which the Sumter had been allowed to remain at Trinidad, and on the supplies which she had obtained there. He said that France and, he thought, all the other powers of Europe, refused to allow privateers to remain for more than twenty-four hours in their ports. He could hardly conceive that England wished to stand alone as the only power which admitted the enemies of the United States without restriction into its harbors. He supposed that the matter could hardly have been presented in this light to Her Majesty's government.

I observed to Mr. Seward that I supposed that in this matter each power had looked back to precedents, and taken the course which had been usual with it on similar occasions in former times. In one point the English rule was, I said, more stringent than that of France and many other powers, for armed vessels were not allowed to carry their prizes into British ports for any time, however short.

Mr. Seward did not pursue the conversation. He merely said that he had wished to mention the matter to me in the hope that I might do something toward getting it satisfactorily settled.

I have, &c.,
(Signed) LYONS.

Lord Lyons to Earl Russell.

WASHINGTON, *November* 9, 1861.

MY LORD: With reference to my dispatch of the 4th instant, I have the honor to inform your lordship that this morning Mr. Seward spoke to me again on the subject of the admission of confederate vessels into British ports. He used very nearly the same language on this as on the former occasion. He seemed, however, to wish now to be understood as requesting me positively to suggest to Her Majesty's government to adopt the rule in this respect which had, he said, been adopted by all the other powers of Europe. He seemed to desire to make this suggestion through me, rather than in a more formal manner through the United States minister in London.

I said to Mr. Seward that Great Britain had, I thought, been the first power to place any restriction upon the admission into her ports of the armed vessels of the belligerents in the present war; and that she had no doubt followed the precedents afforded by her own previous conduct in similar cases. I did not make any difficulty about conveying Mr. Seward's suggestion to your lordship, but I did not express any opinion as to the reception it would meet with.

I have, &c.,
(Signed) LYONS.

Mr. Adams to Mr. Seward.

[Extract.]

LEGATION OF THE UNITED STATES,
London, December 20, 1861.

SIR: * * * * * * * I decided to ask a conference of Lord Russell for the purpose of talking over the substance of your communications to me in dispatches No. 136 and No. 137. It was appointed for yesterday at 3 o'clock, when I enjoyed an opportunity for full and frank conversation.

* * * * * * * *

On the third point his lordship contested the fact as stated in the dispatch. He recapitulated what the government had done as regards the assistance said to have been rendered to privateers in the colonies. Supplies had been refused by the authorities in all cases. Whatever had been obtained had come from purchases of individuals. The only difference that he could find between the action of this government and that of other nations was that the stay of belligerent vessels was confined by the latter to twenty-four hours. As to that, he said that the omission to insert the same provision in the British orders was by no means owing to unfriendliness to the United States.

On the contrary, it was thought that if a government vessel of theirs should put into any port, such as Malta, for example, to stay a short time, it had seemed to them churlish to issue a decree to limit it to a single day. He said he had taken some pains to make inquiries as to the action of other governments, and, so far as he could learn, he found it in other respects substantially the same.

I have, &c.,
(Signed) CHARLES FRANCIS ADAMS.

With the view of preventing the recurrence of similar complaints in future, and also of preventing as far as might be the possibility of any abuse of the asylum granted in British ports (as in those of other neutral powers) to belligerent vessels, the British government on the 31st of January, 1862, issued the subjoined orders, to be observed in all the ports of the United Kingdom and those of Her Majesty's transmarine territories and possessions:

[16] *The secretary of state for foreign affairs to the lords commissioners of the admiralty.*[1]

FOREIGN OFFICE, *January* 31, 1862.

MY LORDS: Her Majesty being fully determined to observe the duties of neutrality during the existing hostilities between the United States and the States calling themselves "the Confederate States of America," and being, moreover, resolved to prevent, as far as possible, the use of Her Majesty's harbors, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your lordships, for your guidance, the following rules, which are to be treated and enforced as Her Majesty's orders and directions.

Her Majesty is pleased further to command that these rules shall be put in force in the United Kingdom and in the Channel Islands on and after Thursday, the 6th day of February next, and in Her Majesty's territories and possessions beyond the seas six days after the day when the governor or other chief authority of each of such territories or possessions, respectively, shall have notified and published the same, stating in such notification that the said rules are to be obeyed by all persons within the same territories and possessions.

I. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves "the Confederate States of America," or until Her Majesty shall otherwise order, no ship of war or privateer belonging to either of the belligerents shall be permitted to enter or remain in the port of Nassau, or in any other port, roadstead, or waters of the Bahama Islands, except by special leave of the lieutenant-governor of the Bahama Islands, or in case of stress of weather. If any such vessel should enter any such port, roadstead, or waters by special leave, or under stress of weather, the authorities of the place shall require her to put to sea as soon as possible, without permitting her to take in any supplies beyond what may be necessary for her immediate use.

If, at the time when this order is first notified in the Bahama Islands, there shall be any such vessel already within any port, roadstead, or waters of those islands, the lieutenant-governor shall give notice to such vessel to depart, and shall require her to put to sea, within such time as he shall, under the circumstances, consider proper and reasonable. If there, then, shall be ships of war or privateers belonging to both the said belligerents within the territorial jurisdiction of Her Majesty, in or near the same port, roadstead, or waters, the lieutenant-governor shall fix the order of time in which such vessels shall depart. No such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war, or privateer, or merchant-ship) which shall have left the same port, roadstead, or waters, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty.

II. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves "the Confederate States of America," all ships of war and privateers of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose or for the purpose of obtaining any facilities of warlike equipment; and no ship of war or priva-

[1] Appendix, vol. iii, p. 18.

teer of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant-ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

III. If any ship of war or privateer of either belligerent shall, after the time when this order shall be first notified and put in force in the United Kingdom and in the Channel Islands, and in the several colonies and foreign possessions and dependencies of Her Majesty respectively, enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either of which cases the authorities of the port, or of the nearest port, (as the case may be,) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel, which may have been allowed to remain within British waters for the purpose of repair, shall continue in any such port, roadstead, or waters for a longer period than twenty-four hours after the necessary repairs shall have been completed: Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant-ships) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or a merchant-ship) of the one belligerent, and the subsquent departure therefrom of any ship of war or privateer of the other belligerent; and the times hereby limited for the departure of such ships of war and privateers, respectively, shall always, in case of necessity, be extended, so far as may be requisite for giving effect to this proviso, but not further or otherwise.

IV. No ship of war or privateer of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew; and except so much coal only as may be
[17] sufficient to carry such vessel to the nearest port of her own *country, or to some nearer destination; and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters, as aforesaid.

I have, &c.,
(Signed) J. RUSSELL.

By the first and second of the foregoing orders belligerent vessels were absolutely excluded from the ports, roadsteads, and waters of the Bahama Islands, except in case of stress of weather or of special leave granted by the lieutenant-governor. These islands being very near to the American coast, access to them was of little importance to the armed vessels of the United States, unless under stress of weather; while to vessels of the Confederate States it was of great importance, the harbors of these States being generally, though not always, effectively blockaded.

The orders thus issued by Her Britannic Majesty's government were more stringent and comprehensive by far than those of any other neutral government. It was not the fact that in the ports of the French empire, or in those of other neutral powers generally, belligerent vessels entering without prizes were prohibited from remaining more than twenty-four hours or from purchasing supplies other than arms and military supplies.

The Sumter, after leaving Trinidad, entered in succession the ports of Paramaribo, of San Juan de Maranham in the empire of Brazil, where she remained ten days; of Port Royal and St. Pierre in Martinique; and of Cadiz, where she remained fourteen days. She was during fourteen days in the waters of Martinique, and procured there, under the

written authority of the governor of the island, as much coal as her commander wished to take on board to enable him to extend his cruise across the Atlantic, together with other supplies. A few days after her arrival, the Iroquois, a war steamer of the United States, entered Port Royal harbor, and the subjoined correspondence passed between her captain and the governor:

Captain Palmer to the governor of Martinique.

UNITED STATES STEAMSHIP IROQUOIS,
Off St. Pierre, November 15, 1861.

SIR: As circumstances prevent my paying my personal respects to your excellency or your representative at this place, I write to announce my arrival in the afternoon of yesterday, as well as to inform you that, to my surprise, I find a notorious steamer called the Sumter quietly coaling at the wharves and enjoying the hospitalities of the port.

As your excellency cannot be aware of the character of this vessel, I denounce her to you as one that has been for some time engaged in pirating upon the commerce of the United States, robbing, burning, or otherwise destroying all American vessels which come within her reach.

May I not hope, therefore, that your excellency, upon this representation, will not allow her to enjoy the privileges I complain of, but direct her to leave the protection of the French flag and the immunities of a French port?

I have, &c.,
(Signed) JAS. S. PALMER,
Commanding United States Steamship Iroquois.

His Excellency the GOVERNOR OF MARTINIQUE.

The governor of Martinique to Captain Palmer.

[Translation.]

GOUVERNEMENT DE LA MARTINIQUE, CABINET DU GOUVERNEUR,
No. 430 *Fort-de-France, le* 15 *Novembre,* 1861.

M. LE COMMANDANT: I have the honor to reply to the letter which you addressed me this morning.

I am not ignorant, M. le commandant, of the presence in the roads of St. Pierre of a vessel belonging to the States of the South, who profess to have formed a separate confederation.

To accomplish the generous intentions of the Emperor, I wish to be hospitable to the vessels of the two belligerent parties, but I will not, nor can, without violating the orders of His Majesty, divest myself of the absolute neutrality that I ought to observe.

That is to say to you, M. le commandant, that if it is not my intention to refuse an anchorage to a vessel belonging to the States of the South, I offer to you, on the other hand, the same hospitality and the same facilities to the vessels belonging to the Government of the Union which you have the honor to command.

There exist, besides, international laws, that every civilized nation scrupulously observes, and which I need scarcely recall to you, M. le commandant, nor to the commander of the Sumter.

Accept, &c.
(Signed) LE AMIRAL,
Gouverneur de la Martinique, &c.

M. LE COMMANDANT DE L'IROQUOIS.

The captain of the Iroquois was also informed that, if the Sum-
[18] ter should leave *the port before him, he would not be permitted to weigh anchor until twenty-four hours should have elapsed after her sailing. He quitted his anchorage immediately, and cruised in the offing, with the design of intercepting her, till the night of the 23d, when she succeeded in making her escape.

On the 18th of January, 1862, the Sumter arrived at Gibraltar. The American consul at that port immediately addressed a letter to the governor, informing him of the fact, and expressing the hope that he would "give such orders as may prevent this rebel cruiser from obtain-

ing the necessary facilities, and making equipments for the continuance of her unlawful vocation." To this letter the following answer was returned by the colonial secretary of the dependency:[1]

Mr. Freeling to Mr. Sprague.

SECRETARY'S OFFICE, *Gibraltar, January* 19, 1862.

SIR: I am directed by his excellency the governor to acknowledge the receipt of your letter of yesterday's date on the subject of the confederate steamer Sumter, now at anchor in this bay.

His excellency desires me, in reply, to inform you that the instructions contained in Her Majesty's proclamation of the 13th of May last (published in the Gibraltar Chronicle of the 1st of June, 1861) with reference to the strict neutrality to be observed by Her Majesty's subjects in the contest between the Government of the United States of America and certain States styling themselves "the Confederate States of America," will be strictly carried out with regard to the rights and obligations toward both belligerent parties.

I have, &c.
(Signed) S. FREELING,
Colonial Secretary.

On the 21st January, 1862, the consul addressed a letter to the senior naval officer at Gibraltar, asking to be informed, for the guidance of the masters of American vessels then lying in the bay, what rules he intended to lay down and enforce "in case any American vessels should leave port before the Sumter, or if the Sumter should be outside the port, waiting to intercept them." He was informed, in answer, that "American merchant-vessels quitting Gibraltar while the Sumter is in the bay, are entitled to a start of twenty-four hours before being pursued with a hostile intention, and it is the duty of the authorities concerned to see that such protection is extended over them." He was further informed that notice of this regulation had been given to the commander of the Sumter.[2]

On the same 21st of January, the consul telegraphed to the minister of the United States in London information that the Sumter was still in harbor, and added, "The British governor observes strict neutrality, in conformity with the Queen's proclamation."

The Sumter was, in fact, according to the statements of the United States consul, unable to leave Gibraltar for want of coal, the consul having succeeded in inducing the merchants of the place to refuse to supply her with coal, though her commander offered 50 per cent. more than the market price. She then applied to be allowed to purchase coal from the government stores; but this was refused, in conformity with the rule observed throughout the war, at all British ports, toward the vessels of both belligerents.[3]

On the 12th February, 1862, the United States war steamer Tuscarora arrived at Gibraltar, and proceeded to coal at the neutral port of Algeciras. She was soon afterward joined by the United States war steamer Ino, and subsequently by the Kearsarge; and the Ino and Kearsarge remained off Algeciras waiting to intercept the Sumter. The Sumter was paid off in April, and lay in harbor till December, 1862, when she was sold by public auction (after having been first deprived of her armament) to a British subject resident at Liverpool. The United States consul addressed to the governor a protest against the sale, on the ground, first, that the Sumter had come into the possession of the confederate government as a prize of war, (which was proved not to be the fact, the vessel having been purchased by that government from a

[1] Appendix, vol. ii, p. 13. [2] Ibid., pp. 9 and 10. [3] Ibid., p. 18.

private owner,) and secondly, that the sale was made "for the purpose of avoiding a capture by the cruisers of the United States." This protest was not accompanied by any proofs, but notice of it was officially published by the colonial secretary before the day fixed for the sale.[1]

With reference to this sale the subjoined letters passed between the United States minister in London and Her Britannic Majesty's secretary of state for foreign affairs:[2]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, December 30, 1862.

MY LORD: On the 19th of this month, I am informed by the consul of the United States at Gibraltar, that a public sale is said to have been made of the steamer
[19] Sumter, a vessel which had committed *much depredation upon the commerce of the United States, and which had taken shelter in that port from pursuit from the national ships.

Having the strongest reason, from the known character and previous conduct of the alleged purchaser, to believe that this sale is effected solely for the purpose of rescuing the vessel from its present position, and of making use of Her Majesty's flag to convert it to new purposes of hostilities to the United States, I must pray your lordship's attention to the necessity under which I am placed of asking the assistance of Her Majesty's government to prevent any risk of damage to the United States from a fraudulent transaction in one of her ports; or, in default of it, of declining to recognize the validity of the transfer, should that vessel subsequently be found by the armed ships of the United States sailing on the high seas.

Renewing, &c.,
(Signed) CHARLES FRANCIS ADAMS.

Earl Russell to Mr. Adams.[3]

FOREIGN OFFICE, *January* 1, 1863.

SIR: I have the honor to acknowledge the receipt of your letter of the '1 ultimo, calling my attention to the circumstances attending the sale of the steam mter at Gibraltar, and I have the honor to state to you, in reply, that the law of the Crown have already the case before them.

I have, &c.,
(Signed) RUSSELL.

Earl Russell to Mr. Adams.[4]

FOREIGN OFFICE, *January* 15, 1863.

SIR: With reference to my letter of the 1st instant, in which I acknowledged the receipt of your letter of the 30th ultimo, respecting the sale of the Sumter at Gibraltar, I have now the honor to inform you that Her Majesty's naval and military officers at that port have received instructions not to give any protection to that vessel beyond the waters of Gibraltar; but it will of course be clearly understood that those instructions do not preclude the owners of the Sumter, if that vessel should be taken by United States cruisers, from appealing, according to the usage and practice of international law, to the prize court in the United States against the captors; nor will Her Majesty's government be precluded from taking any course which may appear hereafter to them proper, if the Sumter, now assumed to be British property, should be hereafter condemned, or otherwise dealt with in any manner which might not be, in their judgment, warranted by international law.

I have, &c.,
(Signed) RUSSELL.

Mr. Adams had on the 3d January, 1863, telegraphed to the American consul at Gibraltar that Captain Bryson, commanding the United States war steamer Chippewa, was to endeavor to capture the Sumter should she leave Gibraltar under the British flag; and on the 19th January, 1863, he again telegraphed, "The Sumter should be captured if

[1] Appendix, vol. ii, p. 45.
[2] Ibid., p. 47.
[3] Ibid., p. 52.
[4] Ibid., p. 54.

she goes out of the British waters on the high seas. If she have nominal British papers she must be sent home for adjudication as prize." The American consul, on the 21st January, answered as follows: "Your telegram communicated to our commanders: Sumter coaling again and provisioning to-day." She sailed from Gibraltar on the 7th February, was not captured, and reached Liverpool on the 13th.[1] At Liverpool she remained until the 3d July, 1863, when she sailed as a merchant-vessel, without armament, and carrying as freight some heavy ordnance, which could not possibly have been used on board of her. She had undergone repairs, but all fittings for warlike purposes had been removed from her, and she had been re-named the Gibraltar. While in port she had been carefully watched by order of Her Majesty's government, as a precaution lest she should be in any way armed or equipped for war; and she was not permitted to clear till it had been satisfactorily shown that she was in no respect so equipped and had no armament.[2] She is believed to have been wrecked at last in attempting to enter Charleston. After the time when she entered the harbor of Gibraltar she never appeared at sea as an armed ship, nor was employed to commit hostilities against the United States or their citizens.

With reference to the sale and transfer of this vessel, the views of Her Britannic Majesty's government were further expressed in the following letter addressed to the minister of the United States in London:[3]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *April* 20, 1863.

SIR: There are several statements in your letter of the 14th of March respecting the sale of the Sumter, at Gibraltar, to a British owner, upon which, if any advantage were likely to result from further discussion of the subject, I should feel le
[20] right to observe. But it appears to me sufficient to *say, that you seem to have confounded, both in your reasoning upon the subject and in your reference to authority, the positions of a neutral and belligerent in regard to the sale of ships belonging to another belligerent, and to have forgotten, as in the instance of your reference to a statement in a passage on the law of prize, that no neutral state, such as Great Britain now is, administers prize law in favor of either belligerent.

The neutral and belligerent have distinct rights in the matter: the neutral has a right to acquire such property offered to him for purchase, but the belligerent may, in the particular circumstances of the case, not recognize the transfer of such property, as being that of his enemy, only parted with to the neutral in order to protect it from capture on the high seas. The prize court of the belligerent, when property so circumstanced is brought before it, decides whether the transfer is fair or fraudulent.

The British government, when neutral, is not bound to refuse to a British subject the right to acquire by purchase a vessel which a belligerent owner may desire to part with, but it would not deny the right of the adverse belligerent to ascertain, if such vessel were captured by its cruisers, whether the vessel had rightfully, according to the law of nations, come into the possession of the neutral; and if Great Britain were herself belligerent, she would not complain of a neutral government allowing one of its subjects to acquire by purchase a vessel which her adversary might desire to part with, though she would have the right of capturing such vessel on the high seas, and sending it before the prize court for judgment as to whether the vessel had rightfully, according to the law of nations, become the property of a neutral owner.

I have, &c.,
(Signed) RUSSELL.

The course pursued by Her Majesty's government in this case was adhered to in 1864, in the case of the confederate ship Georgia. It was afterward judged expedient by the government to prohibit vessels of war belonging to either belligerent from being dismantled or sold in British ports.

It is not the duty of a neutral government to prohibit the sale within

[1] Appendix, vol. ii, p. 59. [2] Ibid., pp. 64–80. [3] Ibid., p. 62.

its territory of a ship owned by a belligerent to a neutral purchaser. This is a transaction which in no way concerns the neutral government, and with which it cannot be called upon to interfere. Under certain circumstances, indeed—as in the case of a ship of war driven by superior force to take refuge in a neutral port—such a sale may be liable to be declared void by a prize court of the other belligerent. But this is a jurisdiction exercised by prize courts alone. Until so set aside, the sale (even in the case supposed above) is valid everywhere, and operates to transfer the property to the neutral purchaser. Nor again can a neutral government be called upon to apply rules applicable exclusively to vessels of war to a vessel which, having originally been armed for war, has been disarmed and sold as aforesaid, unless it clearly appear that the sale was a fictitious transaction, intended to disguise, without altering, the true character of the ship.

THE NASHVILLE.

The Nashville, an armed steamer commissioned as a ship of war of the Confederate States, arrived at the British dependency of Bermuda on the 30th of October, 1862, having sailed from Charleston on the 26th.[1] Her commander applied for leave to draw a supply of coals from Her Majesty's dock-yard, but this request was refused. She procured coal from a private yard, and sailed on the 4th November. On the 21st November she entered the harbor of Southampton, having, on her way, taken and destroyed an American packet-ship, (the Harvey Birch,) and on the 22d went into dock for repairs.[2] On the same day directions were sent from the Foreign Office that she "should not be allowed to equip herself more completely as a vessel of war, or to take in guns or munitions of war."

On the same 22d of November, Mr. Adams addressed a note to Earl Russell in reference to the Nashville, inclosing certain papers received from the consul of the United States in London.[3] From statements in these papers, it would, Mr. Adams alleged, appear that the Nashville was not equipped under a commission as a ship of war, nor even with the pretense of a letter of marque; and, further, that she was sent to England with the avowed design that she should be refitted in English ports and made a formidable vessel of war, and that the officers who came in her should be put in command of two other ships which were alleged to be then fitting out in the ports of Great Britain for the purpose of carrying on war against the United States. He proceeded to request that Her Majesty's government would cause inquiry to be made, and would adopt such measures as the case, upon investigation, might seem to demand. "This inquiry may be solicited to the ascertainment of two classes of facts: the first, as to the authority possessed by this vessel to commit so aggressive an act on the citizens of a friendly power, and then to claim a refuge and recognition in the harbors of Great
[21] Britain. The second, in case *the nature of that authority be deemed sufficient—at least in the view of Her Majesty's government—as to the purposes for which the ship is alleged to have come across the ocean, to wit, the making more effective preparation in the ports of Great Britain for carrying on a war against the people of a friendly nation. In the former case, the question will arise whether the vessel be or be not subject to due process of law as a common disturber of the peace of the world; in the second, whether a recognized

[1] Appendix, vol. ii, p. 87. [2] Ibid., pp. 90, 91. [3] Ibid., p. 92.

belligerent shall or shall not be permitted with impunity to violate the terms of Her Majesty's proclamation forbidding the fitting out, within the ports of Great Britain, of any armament intended to be used against a nation with which she is at peace."

The foregoing note was immediately answered by Earl Russell, as follows:

Earl Russell to Mr. Adams.[1]

FOREIGN OFFICE, *November* 23, 1861.

Lord Russell presents his compliments to Mr. Adams, and begs leave to acquaint him that his letter and the inclosure shall receive the immediate attention of Her Majesty's government.

Lord Russell has already given directions that no infringement of the foreign enlistment act shall be permitted in regard to the Nashville.

On the 28th November, 1861, Earl Russell addressed to Mr. Adams, with reference to his note of the 22d, a further note, which was as follows:

Earl Russell to Mr. Adams.[2]

FOREIGN OFFICE, *November* 28, 1861.

The undersigned, Her Majesty's principal secretary of state for foreign affairs, has the honor to inform Mr. Adams, envoy extraordinary and minister plenipotentiary of the United States at this court, that his note of the 22d instant has been the subject of careful and anxious consideration by Her Majesty's government.

Mr. Adams, after reciting the capture and destruction by fire of the United States merchant-ship on the high seas by order of the commander of the armed steamer called the Nashville, and the subsequent arrival of the Nashville in the port of Southampton, asks for an inquiry as to two classes of facts: the first, "as to the authority possessed by this vessel to commit so aggressive an act on the citizens of a friendly power, and then to claim a refuge in the harbors of Great Britain;" the second, "in case the nature of that authority be deemed sufficient, at least in the view of Her Majesty's government, as to the purposes for which the ship is alleged to have come across the ocean, to wit, the making more effective preparations in the ports of Great Britain for carrying on war against the people of a friendly nation."

Her Majesty's government have directed their inquiries to both these points, and also to the state of the law as applicable to the facts thus by them ascertained.

With regard to the first point, the undersigned has to state that the Nashville appears to be a confederate vessel of war; her commander and officers have commissions in the so-styled confederate navy; some of them have written orders from the navy department at Richmond to report to Lieutenant Pegram "for duty" on board the Nashville, and her crew have signed articles to ship in the confederate navy.

In these circumstances the act done by the Nashville, of capturing and burning on the high seas a merchant-vessel of the United States, cannot be considered as an act "voluntarily undertaken by individuals not vested with powers generally acknowledged to be necessary to justify aggressive warfare," nor does it at all "approximate within the definition of piracy."

Such being the answer of Her Majesty's government on the first point raised by Mr. Adams, the undersigned passes to the second.

The undersigned stated to Mr. Adams, in his informal note of the 23d instant, that he had already given directions that no infringement of the foreign enlistment act should be permitted in regard to the Nashville. In fact, directions had already been given to prevent the Nashville from augmenting her warlike forces within Her Majesty's jurisdiction in contravention of the foreign enlistment act.

With respect to the allegation made by Mr. Adams that some of the officers of the Nashville are to be put in command of vessels now fitting out in British ports for purposes hostile to the Government of the United States, the undersigned can only say that, if reasonable evidence can be procured to that effect, all parties concerned who shall be acting in contravention of the foreign enlistment act shall be legally proceeded against, with a view to the punishment of the persons and to the forfeiture of the vessels.

Having thus answered Mr. Adams upon the two points to which his attention was called, the undersigned has only further to say that if, in order to maintain inviolate the neutral character which Her Majesty has assumed, Her Majesty's government

[1] Appendix, vol. ii, p. 95.

[2] Ibid., p. 101.

should find it necessary to adopt further measures within the limits of public law. Her Majesty will be advised to adopt such measures.

It is the earnest desire of Her Majesty to preserve intact the friendly relations between Her Majesty and the United States of America.

The undersigned, &c.

(Signed)

RUSSELL.

[22] *On the 2d December, 1861, Mr. Adams answered the foregoing note as follows:

Mr. Adams to Earl Russell.[1]

LEGATION OF THE UNITED STATES,
London, December 2, 1861.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor to acknowledge the receipt of a note from the Right Honorable Earl Russell, Her Majesty's principal secretary of state for foreign affairs, dated on the 28th of November, and in answer to the note of the undersigned soliciting an investigation into the case of the armed steamer the Nashville.

While the undersigned regrets that Her Majesty's government has determined to give what he cannot but think a liberal construction to the evidence furnished of the character of the voyage of the Nashville, it is yet a source of great satisfaction to him to learn the intention expressed by the government to apply all its power to the prevention of measures taken within this kingdom by ill-disposed persons to fit out enterprises of a hostile character to the United States. The undersigned entertains no doubt that this information, which has been already transmitted by him to this government, will be received with much pleasure.

The undersigned, &c.

(Signed) CHARLES FRANCIS ADAMS.

Reports of the nature of the repairs which the Nashville was undergoing, showing that nothing whatever was being done to fit her more completely as a vessel of war, were from time to time received at the Foreign Office from the senior naval officer at Southampton, and were forwarded to Mr. Adams for his information. Mr. Adams, in acknowledging the receipt of these reports, added, "It is a source of gratification to him (Mr. Adams) to observe the continued supervision exercised by Her Majesty's government over the outfit of that vessel."—(28th December, 1861.)[2]

On the 15th December, 1861, the United States war-steamer Tuscarora arrived in Southampton Water. She remained there, occasionally shifting her anchorage, until after the departure of the Nashville, which occurred on the 3d February following. While the two ships remained in British waters, Her Majesty's government enforced with strict impartiality the rule which had previously been enforced by the French authorities at Martinique in the case of the Sumter and Iroquois, that, if either should sail, the other should not follow within twenty-four hours afterward. The facts are stated in reports addressed by Captain Patey as senior naval officer to Her Majesty's board of admiralty.[3] Both ships coaled at Southampton.

In July, 1862, the Tuscarora returned to Southampton, and remained in that port undergoing repairs for three weeks or thereabouts.

GENERAL COURSE PURSUED BY HER BRITANNIC MAJESTY'S GOVERNMENT, AND BY OTHER MARITIME POWERS, IN REGARD TO THE RECEPTION OF BELLIGERENT CRUISERS.

From the beginning of the war to the end of it, Her Britannic Majesty's government scrupulously observed, in respect of vessels entering British ports or waters under the flag of either belligerent, the duties of a neutral power. The cruisers of both were admitted upon the same

[1] Appendix, vol. ii, p. 102.
[2] Ibid., p. 105.
[3] For a summary of the proceedings of the two vessels, see Appendix, vol. ii, p. 130.

terms; and the regulations which it was found necessary to make from time to time in order to prevent the hospitality thus accorded from being abused, whether by design or through inadvertence, were impartially applied to both. Unremitting care and vigilance were employed to prevent these necessary precautions from being infringed or eluded, and especially to prevent any belligerent vessel from engaging in hostilities, or from enlisting seamen or otherwise increasing its military force, within British territory, or using such territory as a station from whence to observe and attack enemy's ships. The difficulties occasioned, especially in Her Majesty's colonial possessions, by the resort of belligerent cruisers to British ports and waters, were considerable, and called for the exercise of much judgment and moderation on the part of the local authorities. By United States cruisers the ports and waters of Her Majesty's dominions were resorted to for coaling and other purposes more frequently than by vessels of the Confederate States. The impartial neutrality maintained in these respects by Her Majesty's government was nevertheless made a frequent subject of complaint by the Government of the United States, which continued to insist that confederate vessels ought to have been treated as piratical, or at least excluded altogether; whilst the Confederate States, on their part, complained that the regulations enforced were unequal in operation, and unduly disadvantageous to a belligerent whose ports and coasts were under blockade.

The neutrality observed by Great Britain was observed also throughout the war by other maritime powers. By them, as by Great Britain, the armed vessels of both belligerents were admitted impartially and indifferently into their ports, subject to such regulations and conditions as they respectively judged it expedient to impose for their own protection, and to prevent their hospitality from being abused.

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*PART III.

STATEMENT ON INTERNATIONAL RIGHTS AND DUTIES; ON THE POWERS WHICH WERE POSSESSED BY HER BRITANNIC MAJESTY'S GOVERNMENT OF PREVENTING UNLAWFUL EQUIPMENTS, AND THE MANNER AND CIRCUMSTANCES IN AND UNDER WHICH THESE POWERS WERE EXERCISED DURING THE WAR.

PART III.—Introductory statement.

With a view to enable the tribunal to form a just appreciation of the circumstances under which certain vessels were procured from ports in Great Britain by the government of the Confederate States, it will be proper to state, in the first place, some general propositions, applicable to the subject, which are believed by Her Britannic Majesty's government to be in accordance with international law and practice; secondly, to explain the means of prevention which were at the command of Her Majesty's government; and, thirdly, to describe in some detail the manner in which those means of prevention were exercised during the war.

GENERAL PROPOSITIONS.

Her Britannic Majesty's government believes the following propositions to be in accordance with the principles of international law and the practice of nations:

1. A neutral government is bound to exercise due diligence, to the intent that no place within its territory be made use of by either belligerent as a base or point of departure for a military or naval expedition, or for hostilities by land or sea.

2. A neutral government is not, by force of the above-mentioned obligation or otherwise, bound to prevent or restrain the sale within its territory, to a belligerent, of articles contraband of war, or the manufacture within its territory of such articles to the order of a belligerent, or the delivery thereof within its territory to a belligerent purchaser, or the exportation of such articles from its territory for sale to, or for the use of, a belligerent.

3. Nor is a neutral government bound, by force of the above-mentioned obligation or otherwise, to prohibit or prevent vessels of war in the service of a belligerent from entering or remaining in its ports or waters, or from purchasing provisions, coal, or other supplies, or undergoing repairs therein; provided that the same facilities be accorded to both belligerents indifferently; and provided also that such vessels be not permitted to augment their military force, or increase or renew their supplies of arms or munitions of war, or of men, within the neutral territory

4. The unlawful equipment, or augmentation of force, of a belligerent vessel within neutral waters being an offense against the neutral power, it is the right of the neutral power to release prizes taken by means or

by the aid of such equipment or augmentation of force, if found within its jurisdiction.

5. It has been the practice of maritime powers, when at war, to treat as contraband of war vessels specially adapted for warlike use and found at sea under a neutral flag in course of transportation to a place possessed or occupied by a belligerent. Such vessels have been held liable to capture and condemnation as contraband, on proof in each case that the destination of the ship was an enemy's port, and provided there were reasonable grounds for believing that she was intended to be sold or delivered to or for the use of the enemy.

6. Public ships of war in the service of a belligerent, entering the ports or waters of a neutral are, by the practice of nations, exempt from the jurisdiction of a neutral power. To withdraw or refuse to recognize this exemption without previous notice, or without such notice to exert, or attempt to exert, jurisdiction over any such vessel, [24] would *be a violation of a common understanding, which all nations are bound by good faith to respect.

7. A vessel becomes a public ship of war by being armed and commissioned, that is to say, formally invested by order or under the authority of a government with the character of a ship employed in its naval service and forming part of its marine for purposes of war. There are no general rules which prescribe how, where, or in what form the commissioning must be effected, so as to impress on the vessel the character of a public ship of war. What is essential is that the appointment of a designated officer to the charge and command of a ship likewise designated be made by the government, or the proper department of it or under authority delegated by the government or department, and that the charge and command of the ship be taken by the officer so appointed. Customarily a ship is held to be commissioned when a commissioned officer appointed to her has gone on board of her and hoisted the colors appropriated to the military marine. A neutral power may indeed refuse to admit into its own ports or waters as a public ship of war any belligerent vessel not commissioned in a specified form or manner, as it may impose on such admission any other conditions at its pleasure, provided the refusal be applied to both belligerents indifferently; but this should not be done without reasonable notice.

8. The act of commissioning, by which a ship is invested with the character of a public ship of war, is, for that purpose, valid and conclusive, notwithstanding that the ship may have been at the time registered in a foreign country as a ship of that country, or may have been liable to process at the suit of a private claimant, or to arrest or forfeiture under the law of a foreign state. The commissioning power, by commissioning her, incorporates her into its naval force; and by the same act which withdraws her from the operation of ordinary legal process assumes the responsibility for all existing claims which could otherwise have been enforced against her.

9. Due diligence on the part of a sovereign government signifies that measure of care which the government is under an international obligation to use for a given purpose. This measure, where it has not been defined by international usage or agreement, is to be deduced from the nature of the obligation itself, and from those considerations of justice, equity, and general expediency on which the law of nations is founded.

10. The measure of care which a government is bound to use in order to prevent within its jurisdiction certain classes of acts, from which harm might accrue to foreign states or their citizens, must

always (unless specifically determined by usage or agreement) be dependent, more or less, on the surrounding circumstances, and cannot be defined with precision in the form of a general rule. It would commonly, however, be unreasonable and impracticable to require that it should exceed that which the governments of civilized states are accustomed to employ in matters concerning their own security or that of their own citizens. That even this measure of obligation has not been recognized in practice might be clearly shown by reference to the laws in force in the principal countries of Europe and America. It would be enough, indeed, to refer to the history of some of these countries during recent periods, for proof that great and enlightened states have not deemed themselves bound to exert the same vigilance and employ the same means of repression, when enterprises prepared within their own territories endangered the safety of neighboring states, as they would probably have exerted and employed had their own security been similarly imperiled.

11. In every country where the executive is subject to the laws, foreign states have a right to expect—

(*a.*) That the laws be such as in the exercise of ordinary foresight might reasonably be deemed adequate for the repression of all acts which the government is under an international obligation to repress;

(*b.*) That, so far as may be necessary for this purpose, the laws be enforced and the legal powers of the government exercised.

But foreign states have not a right to require, where such laws exist, that the executive should overstep them in a particular case, in order to prevent harm to foreign states or their citizens; nor that, in order to prevent harm to foreign states or their citizens, the executive should act against the persons or property of individuals, unless upon evidence which would justify it in so acting if the interests to be protected were its own or those of its own citizens. Nor are the laws or the mode of judicial or administrative procedure which exist in one country to be applied as constituting a rule or standard of comparison for any other country. Thus, the rules which exist in Great Britain as to the admission and probative force of various kinds of testimony, the evidence necessary to be produced in certain cases, the questions proper to be tried by a jury, the functions of the executive in regard to the
[25] prevention and prosecution of offenses, may differ, as the *organization of the magistrature and the distribution of authority among central and local officers also differ, from those which exist in France, Germany, or Italy. Each of these countries has a right, as well in matters which concern foreign states or their citizens, as in other matters, to administer and enforce its own laws in its own forum, and according to its own rules and modes of procedure; and foreign states cannot justly complain of this, unless it can be clearly shown that these rules and modes of procedure conflict in any particular with natural justice, or, in other words, with principles commonly acknowledged by civilized nations to be of universal obligation.

In connection with the foregoing propositions are to be taken the three rules stated in Article VI of the treaty, and accepted by Her Britannic Majesty's government in the manner expressed in that article.

NEUTRALITY LAWS—LAW OF THE UNITED STATES.

The case of a vessel which is dispatched from a neutral port to or for the use of a belligerent, after having been prepared within the neutral territory for warlike use, is one which may be regarded from different

points of view, and may fall within the operation of different principles. The ship herself may be regarded merely as an implement or engine of war, sold or manufactured to order within neutral territory, and afterward transported therefrom, and the whole transaction as falling within the scope of the principles applicable to the sale, manufacture, shipment, and transportation of articles contraband of war; or, on the other hand, the preparation and dispatch of the ship may be viewed as being really and in effect the preparation and commencement of a hostile expedition. The circumstances of each case can alone determine from which of these two points of view it may most fitly be regarded, and to which class the transaction ought to be assigned. But the difficulty of drawing a clear, precise, and intelligible line between these two classes of transactions has always been considerable in theory, and still greater in practice; and it was enhanced to the utmost during the civil war by the ingenuity and audacity of American citizens, who were engaged in carrying on hostilities against the Government of the United States, and were desirous of availing themselves for this purpose of the ship-building and manufacturing resources of Great Britain. This will sufficiently appear from the narrative which follows; and it will be seen also how serious and incessant were the trouble and embarrassment which these enterprises occasioned to Her Majesty's government. It is by the many difficulties encountered and by the experience acquired during the war that Her Majesty's government was finally led to the conclusion that it was expedient not only to enlarge the scope of its municipal law in relation to this subject beyond what has hitherto been deemed necessary in any other country, but, further, to accept for itself, and propose to other powers, rules of international obligation somewhat more stringent and comprehensive than are to be found in earlier expositions of the law of nations.

The acts of which the Government of the United States is understood to complain belong to a class which have not commonly been made an object of prohibitory legislation. In few countries, or in none, according to the information received by Her Britannic Majesty's government, did the law directly prohibit such acts, or make any definite provision for preventing them, at the time when this war began, except in the United States and Great Britain. Laws are not made till the necessity for them has arisen. In the United States the necessity arose at a very early period in the history of that commonwealth, and has again repeatedly presented itself at various times. The first maritime war in which the United States held the position of a neutral power was that which commenced in 1793, when the French Republic declared war against Great Britain and against the United Provinces of the Netherlands. Within three months after the declaration of war several privateers had been procured, equipped, armed, and commissioned in ports of the United States to cruise under the French flag against the commerce of Great Britain, with which the United States were at peace. They were not only fitted out in American ports, but were owned, officered, and manned, in large proportion, by American citizens. The measures adopted by the Executive of the United States to restrain these enterprises proved inadequate; they were renewed from time to time, and the persons who took part in them were not punished; and on the 5th June, 1794, an act of Congress entitled "An act in addition to the act for the punishment of certain crimes against the United States" was passed for amending the law in this respect. This act was a temporary one, to continue in force for two years, and thenceforth until the end of the then next session of Congress. Its provisions were re-enacted on the 2d March, 1797,

and were made perpetual by an act of Congress passed on the 24th April, 1800. It was not completely effectual. From the published
[26] reports of cases decided in the American *courts it appears that depredations on British commerce were again and again committed by French privateers, subsequently fitted out and armed for war in ports of the United States.

In March, 1806, an expedition against Spain (with which the United States were at peace) was fitted out in New York by one Miranda, a native of Peru, who had served in the French republican army under Dumouriez. This expedition, which consisted of an armed vessel, carrying 18 guns, and two schooners, sailed for its destination. Orders were issued for arresting it, but they were too late. Persons who participated in it were afterward prosecuted, but were acquitted by the jury before whom they were tried.

In the year 1810 war broke out between Spain and her American colonies, and in 1816 Portugal engaged in the war on the side of Spain. The United States remained neutral. It appears from the correspondence which subsequently passed between the Government of the United States and the governments of Spain and Portugal, as well as from the published reports of cases decided in the courts of the United States, that a considerable number of privateers were, at various times during the war, but chiefly in the earlier part of it, fitted out, manned, and armed in ports of the United States for the purpose of cruising against the commerce of Spain and against that of Portugal, and that large numbers of Spanish and Portuguese ships were captured by these privateers. In the dispatches of the Portuguese minister at Washington not fewer than twenty-six of such privateers are mentioned as having been fitted out and armed at a single American port; and fifty ships belonging to Portuguese citizens are stated to have been captured between the years 1816 and 1819, inclusive. It was further stated that the privateers were, for the most part, not only fitted out, but owned and commanded, by citizens of the United States. The facts alleged do not appear to have been disputed by the Government of the United States. In answer to the first representation of the Portuguese minister, in which he indicated ten ships which had armed, or were believed to be then arming, at Baltimore, Mr. Monroe, then Secretary of State, wrote as follows:

The United States Secretary of State to the Portuguese minister at Washington.

WASHINGTON, *December* 27, 1816.

SIR: I have had the honor to receive your letter of the 20th instant, complaining of certain equipments of armed vessels from Baltimore, and of instructions given to the commander of one of those vessels to attack conditionally the vessels of your sovereign, the KING of Portugal and Brazil. You are aware that these vessels are equipped without any authority from this Government, and on pretexts very different from those which you assign. You are also aware that the existing laws do not authorize the President to interfere in such cases, and it is your object to obtain such amendment of them as may be sufficient for the purpose.

I have communicated your letter to the President, and have now the honor to transmit to you a copy of a message which he has addressed to Congress on the subject, with a view to obtain such an extension by law of the executive power as will be necessary to preserve the strict neutrality of the United States in the existing war between Spain and the Spanish colonies, and effectually to guard against the danger in regard to the vessels of your sovereign which you have anticipated.

As soon as a law may be passed on this subject, I shall have the honor of communicating it to you, and I avail myself of this opportunity of assuring you of the great interest which the President takes in cultivating the most kindly relations with your sovereign, his subjects, and dominions.

I have, &c.,
(Signed) JAMES MONROE.
Chevalier J. CORREA DE SERRA.

On the 26th December, 1816, President Madison communicated to Congress the following message:

WASHINGTON, *December* 26, 1816.

It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace toward belligerent parties, and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States.

With a view to maintain more effectually the respect due to the laws, to the character, and the neutral and pacific relations of the United States, I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped, or in course of equipment, with a warlike force within the jurisdiction of the United States, or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions of the cases of merchant vessels furnished with the defensive armaments used on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws, and which the law of nations does not require the United States to prohibit.

(Signed) JAMES MADISON.

Papers relating to the same subject were at the same time laid [27] by the Committee on *Foreign Affairs before the House of Representatives. Among these was one by Mr. Monroe, then Secretary of State, in which he reported as follows:

The provisions necessary to make the laws effectual against fitting out armed vessels in our ports, for the purpose of hostile cruising, seem to be—

1st. That they should be laid under bond not to violate the treaties of the United States, or the obligations of the United States under the law of nations, in all cases where there is reason to suspect such a purpose on foot, including the cases of vessels taking on board arms and munitions of war, applicable to the equipment and armament of such vessels subsequent to their departure.

2d. To invest the collectors, or other revenue officers where there are no collectors, with power to seize and detain vessels under circumstances indicating strong presumption of an intended breach of the law; the detention to take place until the order of the Executive on a full representation of the facts had thereupon can be obtained. The statute-book contains analogous powers to this above suggestion. (See particularly the eleventh section of the act of Congress of April 25, 1808.)

The existing laws do not go to this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive where there is reason to suspect an intention to commit the offense. They rest upon the general footing of punishing the offense where, if there be full evidence of the actual perpetration of the crime, the party is bonded over after the trial to the penalty denounced.

On the 3d March, 1817, a short act was passed, by the first section of which provision was made (by the introduction of the words "colony, district, or people,") for the case of a belligerent community or body of persons not recognized as a sovereign state.

The second and third sections were as follows:

SEC. 10. *And be it further enacted*, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

SEC. 11. *And be it further enacted*, That the collectors of the customs be, and they are hereby, respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign state, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act.

It is to be remarked that these provisions were enacted on a representation by the Secretary of State that it had become necessary, in order to make the laws against fitting out armed vessels effectual, to invest the collectors or other revenue officers with a preventive power to seize and detain on a reasonable suspicion, or at any rate on a "strong presumption," of an intended breach of the law. The only cases in which Congress was willing to confer this power were those defined in these sections, neither of which could by any latitude of construction be so extended as to include a vessel which at the time of its departure was neither owned nor laden with a cargo consisting principally of arms and munitions of war. Nor would the second section embrace any vessel not owned wholly or in part by citizens of the United States; and the security which the collectors were authorized to take was a security only against a hostile employment of the ship by the "owner or owners" thereof, and (in cases within the second section) by "such" owners; that is to say, by owners being American citizens.

On the 20th April, 1818, a further act of Congress was passed, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned." By this act the acts of 1794, 1797, and 1817, were repealed, and their provisions were revised and consolidated, but without being made more stringent in any material respect. It has never since been repealed, altered, or amended, and continues at the present day a part of the law of the United States.

Notwithstanding the legislation of 1817 and 1818, the Spanish and Portuguese ministers continued from time to time to complain to the Government of the United States of depredations on Spanish and Portuguese commerce by vessels fitted out and armed in ports of the United States. By the Spanish minister, writing on the 2d November, 1817, it was affirmed that "the act of Congress of the 3d March, 1817, has in nowise lessened the abuses by which the laws are evaded,
[28] and which render entirely illusory the laudable *purposes for which they were enacted." "From the greater part," he continued, "of the ports of these States there frequently sail a considerable number of vessels, with the premeditated intention of attacking the Spanish commerce, which carry their armament concealed in the hold. It rarely happens that they can be arrested, inasmuch as the collectors of customs say that they have not at their disposition the naval force necessary to effect it. On the other hand, armed vessels, under the flag of the insurgents, enter into the ports of the Union, and not only supply themselves with all necessaries, but also considerably increase the means they already have of destroying the trade of Spain, as has recently been the case at New York, whereby the (so-called) privateers of His Majesty's revolted provinces, which are in reality nothing more than pirates, manned by the scum of all countries, enjoy greater privileges than the vessels of independent powers."

These remonstrances were repeatedly renewed during the year 1818. On the 7th May, 1818, he wrote—

I would have considered myself dispensed from the necessity of again pressing this subject on your attention, if it had appeared possible for me to restrain these armaments by the employment of judicial means; but, unfortunately, the act of Congress of the 20th of April last, for preserving neutrality with foreign nations, and others already in force, although highly judicious, are easily eluded; and although these practices are public and notorious throughout the whole Union, His Majesty's consuls advise me that through a deficiency of evidence they cannot be restrained by a regular application of the law.

And on the 9th June, 1818, he represented that there were then at Baltimore four privateers, three of which were notoriously fitted out there, whilst the fourth was a schooner captured from Spanish owners. All these vessels, he affirmed, were commanded by citizens of the United States, and manned, with scarcely an exception, by American crews; but he added that, though these facts were well known, it was in vain to seek evidence to prove them, "as, a great portion of the commercial people of Baltimore being interested in the cases which produce my present reclamations, no one is willing to come forward and offer testimony against what is termed the general interest."

It is needless here to refer particularly to more recent instances of vessels fitted out in ports of the United States for expeditions against countries with which the United States were at peace. These instances are well known.

In referring to the facts mentioned above, it is by no means the intention of Her Majesty's government to cast any reproach upon the Government or people of the United States. Prohibitory laws directed against offenses of this kind are liable to be evaded or infringed without fault on the part of the Government; and they have accordingly been infringed in the United States by acts much more flagrant than any of those now charged against Great Britain. The enforcement of such laws is indeed beset by special difficulties. It is usually difficult to ascertain the existence of an unlawful intention. The class of acts which they prohibit are easy to conceal or disguise; the occasions which call them into operation occur but seldom; and when these occasions arise it becomes needful either to create a special machinery for the purpose, or to rely upon the officers intrusted with the execution of the ordinary laws of trade and navigation—laws which are framed on the principle of avoiding as much as possible all minute scrutiny and unnecessary interference.

Many cases of alleged violations of the acts hereinbefore mentioned have been brought before courts of the United States, and various parts of them have received from those courts a judicial interpretation. These interpretations have been, and still are, regarded as authoritative expositions of the law of the United States bearing on this subject.

It results from the foregoing statement—

1. That the law of the United States regarding this matter arose out of the prevalence within the United States of the acts which it was designed to prevent, and that it has been altered and amended in order to prevent more effectually the recurrence of those acts.

2. That it has existed in its present form for more than fifty years; that in the course of that time recourse has frequently been had to it; and that it has always been held, and is now held by the legislative authority in the United States, to be adequate for its purpose.

3. That, notwithstanding this law, vessels have from time to time been fitted out and armed within the United States, to cruise and commit hostilities against nations with which the United States were at peace, and that severe losses and injuries have been inflicted on those nations by the depredations of such vessels.

Further, it has been constantly held and maintained by the United States (and particularly during the discussions with Spain and Portugal above referred to) that the powers possessed by the Government of the United States to prevent the fitting out of vessels within the ter-
[29] ritory of the Republic were such only as could be shown to be *actually vested in the Government by the laws and Constitution of the United States in force for the time being; and that,

provided those powers had been *bona fide* exercised, the United States were not responsible for any losses, however severe, inflicted by any vessel or vessels, however numerous, fitted and armed within their territories.

It has been the practice of the executive authorities of the United States, in enforcing the law, to act upon information laid before them by consuls of foreign powers, or other persons interested officially or otherwise in preventing the acts prohibited by the law, and to require the persons furnishing such information to produce evidence in support of it; and the importance of such information, to enable the neutral power to intervene in proper cases, was expressly pointed out in the letter of Mr. Jefferson to Mr. Hammond, of the 5th September, 1793, annexed to the treaty of the 19th November, 1794, between the United States and Great Britain.

LAW OF GREAT BRITAIN.

The law of Great Britain on this subject was, at the time of the happening of the events out of which the questions submitted to the arbitrators arose, embodied in an act of Parliament passed in the year 1819, and entitled "An act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes without His Majesty's license." This act is commonly referred to as the "foreign enlistment act." At the time when it was proposed to Parliament, it was reported and believed that expeditions were being prepared in England for the assistance of the Spanish-American colonies, which were then at war with their mother country. The circumstances, therefore, which gave rise to the passing of the British law, were similar to those which gave rise to the passing of the corresponding laws in the United States, with the difference that in the United States armed vessels had actually been fitted out, and had actually committed hostilities and depredations against the commerce of a friendly power, whereas in Great Britain it was only apprehended that some vessels were about to be fitted out and dispatched with a like purpose.

The legislature of Great Britain, in framing the law of 1819, appears to have adopted as its model the law which had been passed by the Congress of the United States in the preceding year. The British act is, however, as regards the matters now in question, more stringent, rigorous, and comprehensive than that of the United States.

In regard to the fitting out of vessels for belligerent purposes, the section of the act of the United States which defines the offense is as follows:

SEC. 3. *And be it further enacted*, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be guilty of a high misdemeanor, and shall be fined not more than $10,000, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

The section of the British act which defines the offense is as follows:

VII. *And be it further enacted*, That if any person within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom or any of His Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to His Majesty, issue or deliver any commis-
[30] sion for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid; every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's customs or excise, or any officer of His Majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of customs or excise or the laws of trade and navigation, to seize such ships and vessels as aforesaid, and in such places and in such manner in which the officers of His Majesty's customs or excise and the officers of His Majesty's navy are empowered respectively to make seizures under the laws of customs and excise or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation.

The tenth and eleventh sections of the American act (which are commonly referred to as the "bonding clauses") were not introduced into the British act; but, inasmuch as neither of these clauses could have been applied with effect to any of the vessels which sailed from British ports during the war, and the acts of which have given rise to the claims now in question, they may be dismissed from consideration in comparing the two acts for the purposes of this discussion.

During the forty-two years which elapsed between the passing of the act of 1819 and the year 1862, only one case founded on an alleged violation of that act appears to have been brought to trial before a court. This was a criminal prosecution on a charge of having fitted out in England in the year 1849, during the civil war in the kingdom of the Two Sicilies, a ship intended for the naval service of persons in arms against the government of that kingdom.

It results from the foregoing statements that the law of Great Britain, as it existed at the time of the civil war in the United States, was such as in the exercise of due foresight might reasonably be deemed adequate for enabling the British government to perform its obligations as a neutral government. It was modeled upon the law of the United States, which had long existed and had frequently been brought under consideration in the courts of that country; it equaled that law, and even surpassed it in stringency; and offenses against it (if any there were) had been so rare as to have left hardly any trace in the judicial records of Great Britain.

The functionaries to whom the power of seizing vessels for contraventions of the foreign enlistment act was committed by law, were the officers of the customs stationed at the several ports of the United Kingdom. These officers are under the direction of the commissioners of customs resident in London, who are themselves under the general superintendence and control of the lords commissioners of the treasury or finance department of Her Majesty's government.

The police or peace-officers charged with the prevention and detection of crimes and offenses in general within the United Kingdom, are under the control of the local authorities in the several counties and boroughs under the general supervision of the secretary of state for the home department.

The official advisers of the government on questions of law are the attorney-general, the solicitor-general, and the Queen's advocate. To these functionaries (whom it is usual to designate collectively as the "law-officers of the Crown") the government refers for advice on such questions of law as may arise in the administration of public affairs, and it guides itself by their advice in dealing with such questions.

To the foregoing statement respecting the law of Great Britain so far as it specifically relates to the matters now in question, it is proper to add that, according to the general principles of the constitutional law of the kingdom—

1. The Executive cannot deprive any person, even temporarily, of the possession or enjoyment of property, nor subject him to bodily restraint, unless by virtue and in exercise of a power created and conferred on the Executive by law.

2. No person can be visited with a forfeiture of property, nor subjected to any penalty, unless for breach of a law, nor unless such breach can be proved to the satisfaction of a competent legal tribunal, by testimony given on oath in open court, subject to the rules of procedure established here for the due administration of justice. Every witness is liable to be cross-examined by the accused party or his advocate.

3. No person can be compelled to answer a question put to him in a court of law if the question is such that, by answering it, he would incur the risk of a penalty or of a prosecution before a criminal tribunal.

Statements on hearsay are not admissible as evidence.

[31] *These general principles apply equally, whether the object sought to be attained be the prevention or punishment of an injury to the state, or to any citizen of the state, or to any other person or persons whomsoever.

It may be further observed that, during the whole period to which the questions submitted to the arbitrators relate, every case of alleged infringement of the British foreign enlistment act brought to trial within the United Kingdom was required to be proved to the satisfaction of a jury.

EFFECT OF THE BLOCKADE.

After these observations on the nature, extent, and limitations of the powers of prevention which by the laws and constitution of Great Britain were vested in Her Majesty's government, it will be convenient to state the circumstances in the midst of which the government was called upon to exercise those powers during the war.

It has been mentioned above that one of the first acts of the Government of the United States, after the outbreak of the war, was to set on foot a general blockade of the ports, harbors, and sea-coasts of the Confederate States. These States being hemmed in to the landward on

every side, except on the remote southern frontier of Texas, by States which remained faithful to the Union, it was designed by this blockade to cut them off entirely from all traffic and intercourse with neutral countries, especially those from which the people of the South had been accustomed to draw their supplies of manufactured goods, and to which they had been wont to export vast quantities of raw produce. It was not only a commercial blockade on a prodigious scale; it was much more; it was a blockade which, so far as it was successful, shut up and isolated a population of many millions, inhabiting a vast territory and accustomed to export and import largely, from all external commerce whatsoever. At the same time the blockade itself was for a long time very imperfectly maintained, the Navy of the United States being quite inadequate for the purpose, and needing to be supplemented by vessels of all kinds hastily procured, and the fleet thus composed being distributed along an immense coast-line. These facts are notorious.

It is evident that a blockade of this character offered extraordinary inducements, not only to the people of the Confederate States themselves, but to traders in Europe, to use every effort in order to elude it wherever an opening could be discovered. Accordingly, in the year 1862, an active traffic began to be carried on with some of the blockaded ports; and for the purposes of this traffic it was found profitable to procure or construct vessels of a peculiar class, specially adapted for speed and for protection against the fire of blockading squadrons, and differing in various ways, externally and internally, from ships employed in ordinary trade. Recourse was had, for this purpose, to the ports and building-yards of Great Britain, which are accustomed to supply shipping to purchasers of all countries, and are the principal seat of this kind of industry.

Her Majesty's government, though aware that the blockade was for a considerable time not completely effective, and though frequently urged to disregard it, both by the Confederate States and by persons desirous of trading with them, refused to do so, and recognized it from first to last. British subjects who attempted to trade with the blockaded ports were warned by Her Majesty's proclamation (issued at the commencement of the war) that they would incur the risk of the capture and confiscation of their property, and that against that risk their government would not protect them. On the other hand, the government neither did nor could—forcibly or by process of law—prohibit its subjects, or persons within its dominions, from engaging in such trade, or from selling or constructing or purchasing vessels adapted for that purpose. Such a course, indeed, would have been not only a departure from the ordinary practice and usage of neutral nations, but in conflict with those considerations of general expediency on which the rules of international law are founded. The right of blockade is a belligerent right, and the enforcement of it belongs to the belligerent, and not to neutral powers. That blockades, to be binding, must be made effective by the blockading power, is a settled and salutary rule; and this is indeed the sole protection of neutrals against an undue and extravagant extension of the right of blockade. It follows, of necessity, that to the exertions of the blockading power, and to those alone, the task of making them effective must be left.

REPRESENTATIONS OF MR. ADAMS.

At all the principal sea-ports of Great Britain the United States maintained consuls or consular officers. It was the duty of these

[32] officials, in their respective localities, to *keep a watchful eye on whatever might tend to endanger the security or interests of the United States; to use the utmost diligence in informing themselves of any actual or contemplated violations of law which might prove injurious to those interests; to communicate their information to Mr. Adams, the minister of the United States in London, and to act on such instructions as they might receive from him in matters within the range of their functions. And it was the duty of Mr. Adams, in all cases which, in his judgment, demanded action or inquiry on the part of the government of Great Britain, to lay before that government facts sufficient to call for and justify such action or inquiry. In the course of the years 1861, 1862, 1863, 1864, and 1865, many representations were addressed by Mr. Adams to Her Majesty's government respecting vessels which he believed to be either actually employed in carrying on trade with blockaded ports in articles contraband of war or other things, or to be preparing for such employment; and also with respect to other vessels, which he believed to be intended to be used as privateers or commissioned ships of the Confederate States in cruising and carrying on war against the United States. To complaints of traffic carried on with blockaded ports, or in articles contraband of war, it was answered, on the part of Her Majesty's government, that these were enterprises which Her Majesty's government could not undertake to prevent, and the repression of which belonged to the United States as a belligerent power. Allegations, on the other hand, that vessels were being prepared for cruising or carrying on war were immediately referred to the proper officers of the government at the several localities for careful investigation and inquiry. If, on such investigation, it appeared by sufficient *prima facie* evidence that any illegal act was being or had been committed, the vessels were forthwith seized, and proceedings instituted according to law; if not, the result was at once communicated to Mr. Adams, and directions were given to the local authorities to watch closely the vessels as to which his suspicions had been aroused.

THE BERMUDA.

The first of these cases was that of the steamship Bermuda. On the 15th August, 1861, Earl Russell received from Mr. Adams the following note:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, August 15, 1861.

MY LORD: From information furnished from sources which appear to me entitled to credit, I feel it my duty to apprise Her Majesty's government that a violation of the act prohibiting the fitting out of vessels for warlike purposes is on the point of being committed in one of the ports of Great Britain, whereby an armed steamer is believed to be about to be dispatched with the view of making war against the people of the United States.

It is stated to me that a new screw-steamer, called the Bermuda, ostensibly owned by the commercial house of Fraser, Trenholm & Co., of Liverpool, well known to consist in part of Americans in sympathy with the insurgents in the United States, is now lying at West Hartlepool, ready for sea. She is stated to carry English colors, but to be commanded by a Frenchman. She is two-masted, brig-rigged, lower part of funnel black and upper part red, black hull, with a narrow red stripe round the molding, level with the deck, no poop, wheel-house painted white, six white boats, slung in iron davits. She has neither figure-head nor bowsprit. Her bottom is painted pink up to the water-line.

This steamer is armed with four guns, and she has been for some time taking in

[1] Appendix, vol. ii, p. 133.

crates, cases, and barrels believed to contain arms and ammunition of all kinds ordinarily used in carrying on war.

This cargo is nominally entered as destined to Havana, in the island of Cuba, but her armament and cargo are of such a nature as to render it morally certain that the merchants who claim to be the owners can have no intention of dispatching her on any errand of mercy or of peace.

I am informed that this vessel will sail in a day or two. I therefore feel under the highest obligation to submit the information I have obtained as the ground for an application for a prompt and effective investigation of the truth of the allegations while there is time. Not doubting the earnest disposition of Her Majesty's government faithfully to adhere to the principles of neutrality to which it has pledged itself, I ask, on the part of the United States, for no more than a simple enforcement of the law, in case it shall appear that evil-minded persons are seeking to set it at naught.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

On the same 15th August Earl Russell informed Mr. Adams (as the fact was) that he had lost no time in communicating on the subject with the proper department of the government. Inquiries were immediately directed to be made on the spot, and it was found, as the result of such inquiries, that there was no reason to believe that the [33] vessel *was intended* for warlike use. Earl Russell, on the 22d August, 1861, wrote to Mr. Adams as follows:

Earl Russell to Mr. Adams.[1]

FOREIGN OFFICE, *August* 22, 1861.

SIR: I acquainted you in my letter of the 15th instant that I had lost no time in communicating with the proper department of Her Majesty's government respecting the steam-vessel fitting out at Hartlepool, which you believed was about to be dispatched with a view of making war against the people of the United States.

I have now the honor to state to you that the result of the inquiries into this case having been submitted to the proper law-officer of the Crown, Her Majesty's government have been advised that there is not sufficient evidence to warrant any interference with the clearance or the sailing of the vessel.

The seventh section of the foreign-enlistment act, 59 Geo. III, cap. 69, applies to the equipment of a vessel for the purpose of being employed in the service of a foreign state as a transport or cruiser, but has no reference to the mere nature of the cargo on board, and there is at present no proved intention that the vessel itself is to be employed for a warlike purpose.

The persons engaged in the venture must take the consequences which, according to the law of nations, may happen to ensue during transit, owing to a portion of the cargo loaded by them being contraband of war.

I am, &c.,

(Signed) RUSSELL.

The Bermuda was doubtless intended for blockade-running, for which purpose alone she was employed. She sailed from Liverpool with cargo for Savannah, and succeeded in entering that port and returning thence to Liverpool. On her second voyage she was captured by a United States ship, and was condemned as prize.

The vessels to which Mr. Adams next called the attention of Her Majesty's government were the Oreto, or Florida, and the Alabama, originally known as "No. 290." The facts which are within the knowledge of Her Britannic Majesty's government, relating to the preparation, departure, and subsequent history of these two vessels, are fully stated in Parts V and VI of this case.

THE HECTOR.

In November, 1862, Mr. Adams made inquiry of Earl Russell respecting a vessel then in course of construction at Glasgow, which subsequently became Her Majesty's ship Hector. He was informed in answer

[1] Appendix, vol. ii, p. 138.

(as the fact was) that the vessel was being built for Her Majesty's government.[1]

THE GEORGIANA.

The next case was that of the Georgiana.

On the 17th of January, 1863, Earl Russell received from Mr. Adams the subjoined note and inclosure:

Mr. Adams to Earl Russell.[2]

LEGATION OF THE UNITED STATES,
London, January 16, 1863.

MY LORD: It has become my painful duty to call your lordship's attention to one more of the cases in which the neutral territory of Great Britain is abused by evil-disposed persons for the worst of purposes in the present war. I have the honor to transmit a copy of a letter addressed to me by the consul of the United States at London, giving the particulars based upon credible information received by him, the authority for which it is not in his power at present to disclose. As the vessel is known to be on the eve of departure from the port of Liverpool, I fear I have not the time necessary to procure corroborative evidence from that place. Under these circumstances I feel myself impelled to make this representation without further delay. I have reason to believe that the vessel in question is intended to pursue a similar course with that formerly called No. 290, to wit, the destruction of the commerce of the United States. I therefore solicit the interposition of Her Majesty's government, at least so far as to enable me to procure further evidence to establish the proof of the allegations here made, in season for the prevention of this nefarious enterprise.

Praying, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[34] *[Inclosure.]

Mr. Morse to Mr. Adams.

CONSULATE OF THE UNITED STATES,
London, January 16, 1863.

SIR: I have information, on evidence which secures my belief, that the iron screw-steamer Georgiana, Captain Davidson, now in Sandon graving dock, Liverpool, is intended for a confederate privateer, and is now fitting for the business of privateering. She was built in the yard of Mr. Laurie, at Glasgow. Mr. George Wigg, of New Orleans, contracted to have her built. She is now, I presume, but temporarily (for security until she gets off) registered in the name of Niel Mathieson, secretary of the Confederate Aid Association at Glasgow. She is so constructed that armor-plating could be put on to her at any time after leaving the port where she was constructed.

She is a well-built, fast vessel, rigged for fore-and-aft sails, and is over 400 tons, net measurement. She left Glasgow for Liverpool on the 3d of the present month, and is now at the last-named port, preparing for sea. She has port-holes cut for four rifled cannon, and bolts, &c., arranged for them, since she left Glasgow; and also a portion of her armor-plating put on, and small-arms enough for a crew of privateersmen. She will take some forty or fifty men, all told, from Liverpool, and make up a full crew after leaving. Among those now engaged is a gunner, once a sergeant in the royal artillery. She is advertised for Nassau, and will pretend to go out as a regular trader.

I regret that I am unable to sustain the above statement by the affidavits of my informants; but I am bound in honor not to use their names. My information concerning this steamer, for the last five or six weeks, confirms the accuracy of the statement, and I have full confidence in its truth.

The Georgiana will call at Queenstown for coal.

Your obedient servant,
(Signed) F. H. MORSE, *Consul.*

Immediately on receiving the said note and inclosure, Earl Russell sent copies of them to the proper departments of the executive government, with a request that instant inquiry might be made; and on the same 17th January, 1863, he wrote to Mr. Adams as follows:[3]

[1] Appendix, vol. ii, p. 143. [2] Ibid., p. 147. [3] Ibid., p. 148.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *January* 17, 1863.

SIR: I have the honor to acknowledge the receipt this day of your letter of the 16th instant, inclosing a letter from the United States consul in London, giving the particulars based upon credible information received by him, the authority for which it is not in his power at present to disclose, respecting an iron screw-steamer, named the Georgiana, Captain Davidson, now lying in the Sandon graving-dock, at Liverpool, which he believes to be intended for a confederate privateer, and to be now fitting out for the business of privateering.

I have communicated copies of your letter and of its inclosure to the board of treasury, and to the secretary of state for the home department, without delay; and I have requested that orders might be sent by telegraph to the proper authorities at Liverpool enjoining them to take such steps in the matter as may legally be taken.

I think it right, however, to observe that Her Majesty's government cannot be answerable for any difficulty which may be experienced in carrying out those orders, in consequence of the evidence on which the statement of the United States consul is made being withheld from them.

I have, &c.,
(Signed) RUSSELL.

A telegraphic dispatch, directing an immediate investigation, was, on the same day, sent to Mr. Price Edwards, the collector of customs at Liverpool.

The vessel and her papers were examined accordingly, and on the following day (Sunday) the collector reported by telegraph the results of such examination as follows:[1]

Georgiana, British, 407 tons register; brig rig; cargo, merchandise, provisions, and drugs; no guns on deck; no fitting for guns on board; one cwt. powder; iron bulwarks; no port-holes for guns; no fittings for guns on board; a fast vessel; forty, crew; not fitted as a privateer; better adapted for running the blockade; cleared out for Nassau; now in the Mersey, and is intended to leave to-day, say 4 p. m.

SUNDAY, *January* 18.

Detailed reports of the examination were subsequently made by the officers employed for the purpose, and were as follows:[2]

Report of the surveyor of customs, Liverpool, to the collector of customs, Liverpool.

SUNDAY, *January* 18, 1863.

SIR: Last night, about 10 o'clock, I received the telegram sent to you relative to the Georgiana, but being too late, I had no alternative but to wait till this morning early, when I went in search of the vessel, and found that she had hauled into the river on Saturday.

[35] I gave directions to the acting assistant surveyor, Mr. Webb, to accompany me to her, but, as we were going, I met the master of her, (Davidson,) who informed me that all the ship's papers were ashore.

I then accompanied the master, while Webb went to the vessel. On my inspecting the papers, I found nothing to induce the suspicion that she was intended for privateering. She had a great many bills of lading, in which the goods (cargo) were consigned to parties at Nassau.

Among other things, there were a great many packages of drugs, which convinced me that they were intended to run through the blockade.

I also saw the ship's articles, upon which the names of all the crew stood. The amounts set against their respective names, forty in number, were not higher rates of wages than usual; and his charter-party was in the usual style, and destined him to Nassau, Havana, or New Orleans.

On the return of the officer from the ship, he stated that she had no port-holes, no guns, and no fittings for guns on deck, and nothing to denote that she was intended for a privateer.

Under these circumstances, I am respectfully of opinion that she is in no way subject to detention.

Very respectfully, &c.,
(Signed) C. MORGAN, *Surveyor.*
The COLLECTOR.

[1] Appendix, vol. ii, p. 149. [2] Ibid., p. 151.

Declaration of the acting assistant surveyor of customs, Liverpool.[1]

I have been in the service of the customs nearly twenty-seven years. I entered the service as a tide-waiter. Yesterday morning (Sunday) the surveyor, Mr. Morgan, called at my house (for it was my turn off duty) about 7.30, and asked me if I knew where the Georgiana was lying. I told him she had gone into the river on Saturday, and was then lying in the Mersey, opposite the watch-house. I then accompanied him toward the boarding station at the Prince's Dock Pier-head. As we were going down we met the captain, Davidson. He said he was going to the ship. Mr. Morgan then desired me to go to the ship in the river, while he turned back with the captain to see his papers. I went on board the Georgiana at about 9.30 a. m. She was about half a mile off the great landing-stage. I went on board and had the hatches removed in order to examine the cargo. She was not above half full. She appeared to have a quantity of tea and bale goods on board; also, oil, tallow, and provisions, which I saw. There was no objection made to my going into any part of the vessel. I have seen the vessel several times before, both while she lay in the Sandon docks and in the graving-dock. She is an ordinary screw-steamer, *i. e.*, not built stronger than the ordinary merchant-vessel. She is brig-rigged, and not fore and aft. She has no port-holes, and no places fitted for mounting guns. It is impossible that she could have port-holes without a total change in the bulwarks, there being no support to sustain the recoil of the guns. There were eighteen or nineteen iron plates on board, lying on the top of the cargo; they were of the same thickness as the hull of the vessel—that is, the ordinary thickness for merchant-vessels.

I am satisfied, from the construction, general fitting, and adaptations of the ship, that she is in no way fitted for a privateer. I specially noticed the vessel after she came to the port, and on her arrival made several inquiries about her, and so satisfied was I then, and still am, that she was not intended for warlike purposes, that I did not consider myself called upon to make any report concerning her.

(Signed) J. WEBB.

Signed and declared before me, at the custom-house, Liverpool, this 19th day of January, 1863.

(Signed) S. PRICE EDWARDS, *Collector.*

A letter was also sent by the secretary of state for the home department to the mayor of Liverpool, requesting that inquiry should be made by the police respecting the vessel. Inquiry thus made confirmed the reports of the officers of customs, that she was not fitted or intended for war. She was a vessel constructed with a view to speed, for the purpose of running the blockade, slightly and hastily built. Two port-holes had been pierced in her on each side; these, it was stated, might be used to enable her to carry guns for her own protection, as many merchant-vessels do, but were intended (as the ship-builder's foreman, who superintended the piercing of them believed) chiefly for the escape of water, of which, from her great speed, she would ship large quantities in a heavy sea.[2]

All the information thus obtained was transmitted at once to Mr. Adams.

The Georgiana sailed from Liverpool on the 21st January, 1863, with a general cargo for Nassau, and thence for Charleston, as a blockade-runner. In attempting to enter Charleston harbor she was chased and fired upon by the blockading vessels, and was run aground and wrecked.[3]

THE PHANTOM.

On the 27th March, 1863, Earl Russell received from Mr. Adams the subjoined note and inclosure.[4]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES, *London, March* 26, 1863.

MY LORD: I have the honor to transmit, for your information, the copy of an extract of a letter received by me from Mr. Dudley, the consul at Liverpool, giving

[1] Appendix, vol. ii, p. 152.
[2] Ibid., pp. 154, 155, 156.
[3] Ibid., p. 160.
[4] Ibid., p. 167.

[35] some particulars of hostile outfits making *at that place. It is proper to add in correction of a statement therein contained, that Mr. Dudley has to-day informed me that the Southerner has not yet reached Liverpool. There is little doubt, however, of its ultimate destination.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure.]

Mr. Dudley to Mr. Adams.

UNITED STATES CONSULATE, *Liverpool, March* 24, 1863.

SIR: On Saturday last Mr. William C. Miller & Son launched from their yard, in Liverpool, an iron screw-steamer, called the Phantom, built for Fraser, Trenholm & Co. This vessel is large and to have great speed. The contract is not less than seventeen nautical miles per hour. Her engines are being made by Fawcett, Preston & Co. She has three port-holes on each side. Captain Bullock, Captain Tessier, Mr. Prioleau, the leading members of the firm of Fraser, Trenholm & Co., Mr. Thomas, of the firm of Fawcett, Preston & Co., and others, were present at the launch. She is intended for the South, either as a privateer or blockade-runner; there is no doubt about this, I think. She will turn up a privateer. Her draught of water will be light, and with her powerful engines her speed will be very fast. When afloat she will be a most dangerous craft to our commerce, if armed with two or three guns.

I have on several occasions referred to the steamer built at Stockton for Fraser, Trenholm & Co., called the Southerner. This vessel came here yesterday either to coal or else to fit out as a privateer. There is no doubt about this vessel. I suppose it will be impossible for me to obtain legal evidence against these two vessels, and nothing short of this will satisfy this government.

I am, &c.,
(Signed) THOMAS H. DUDLEY.

The receipt of this note was immediately acknowledged by Earl Russell, and Mr. Adams was informed that the proper departments of Her Majesty's government would be requested to make immediate inquiries on the subject.

On the same 27th March, 1863, Earl Russell sent copies of the said note and inclosure to the proper departments, with a request that instant inquiry should be made, and on the following day he wrote to Mr. Adams as follows:[1]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *March* 28, 1863.

SIR: With reference to my letter of yesterday's date, I have the honor to inform you that I have received from the home office a copy of a letter which has been addressed to the mayor of Liverpool respecting the two vessels, Phantom and Southerner, stated by the United States consul at that port to be fitting out for the service of the so-styled Confederate States.

In that letter the mayor of Liverpool is instructed to make immediate inquiries as to these vessels, or whichever of them is now at Liverpool, and to ascertain whether there is any reason to believe that they or either of them are or is being equipped, furnished, fitted out, or armed with the intent to commit hostilities against the United States Government; and, if so, to report whether any evidence on oath can be procured in order to proceedings being taken under the foreign-enlistment act.

I have accordingly the honor to suggest that, as the United States consul at Liverpool has stated in his letter to you that there is no doubt with respect to the vessel named the Southerner, you should instruct that officer to furnish the mayor of Liverpool with the information on which his belief is founded.

I have, &c.,
(Signed) RUSSELL.

The officers of customs at Liverpool made prompt and careful inquiry into the matters alleged by Mr. Adams, and inquiry was also made under the direction of the mayor of Liverpool, and the result of such inquiries was, on the 3d April, 1863, communicated by Earl Russell to Mr. Adams in the following note:[2]

[1] Appendix, vol. ii, p. 168. [2] Ibid., p. 170.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *April* 3, 1863.

SIR: Since the date of my letter of the 27th ultimo, I have received from the board of the treasury a report made by the commissioners of customs, under date of the 31st ultimo, and from the secretary of state for the home department a report from the mayor of Liverpool, bearing the same date, containing the result of inquiries made by them in regard to the vessels Phantom and Southerner, denounced by you in your letter of the 26th ultimo as intended for the naval service of the so-called Confederate States.

It appears from the first of these reports that the Phantom was built at the yard of Mr. W. C. Miller, and is now in the Clarence graving-dock. Her length is 193 feet; her breadth, 22 feet; her depth, 12 feet; her gross tonnage, 321; and her probable register tonnage, 160.

From the considerable space appropriated to her engines, and from her model, there seems to be no doubt a high rate of speed will be obtained; and from her light
[37] draught of water she is well adapted *for running the blockade; but as she has steel plates only half an inch thick, and as the angle-irons which compose the deck-beams are only five by three and a half inches thick, and as, moreover, she has no ports except for water-way, (three in all,) and a hurricane-house on deck, the surveyor of customs considers that she is not intended to carry guns, and that she is not fit for a privateer.

The mayor of Liverpool reports that the Phantom was launched on the 21st of March from the yard of Messrs. Miller & Co., and that her engines are being made and fitted by Messrs. Fawett, Preston & Co., of Liverpool; that she is in an unfinished state, and not expected to proceed to sea under a fortnight or three weeks. No distinct information could be obtained as to what she is intended for, but a strong impression exists that she is destined for the purpose of running the blockade.

The Southerner has not yet arrived at Liverpool.

A strict watch will be kept as regards both vessels.

I have, &c.,
(Signed) RUSSELL.

On the 7th of April, 1863, Earl Russell received from Mr. Adams the following note:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, April 6, 1863.

MY LORD: I have the honor to acknowledge the reception of notes from your lordship, dated the 27th and 31st of March, and two on the 3d of April, in reply to certain representations of mine concerning vessels believed to be in preparation at Liverpool for the carrying on of hostilities at sea against the commerce of the United States. It is a source of great satisfaction to me to recognize the readiness which Her Majesty's government has thus manifested to make the investigations desired, as well as to receive the assurances of its determination to maintain a close observation of future movements of an unusual character, that justify suspicions of any evil intent.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

Mr. Adams subsequently (viz, on the 16th, 19th, and 23d May, 1863)[2] sent to Earl Russell copies of several sworn dispositions made by a detective police officer at Liverpool who had been employed to watch the ship-building yards, and by other persons. These depositions tended to show that the building and fitting of the Phantom was superintended by persons in the employ of Messrs. Fawcett, Preston & Co., a firm of iron-founders and engineers carrying on a very extensive business at Liverpool, (a member of which firm was the registered owner of the vessel.) It also appeared from the depositions that a Captain Bullock (to whom reference will be made hereafter) took part in superintending the work; and it was further sworn by two of the deponents (who were police-constables) that the vessel was entirely cased in steel plates; that she had three port-holes on each side, with steel-plate

[1] Appendix, vol. ii, p. 171. [2] Ibid., pp. 171, 173, 176.

shutters; that she had very little room for cargo; and that she appeared to them to be built for war purposes.

Immediately on the receipt of these depositions, further inquiries were directed by Her Majesty's government, and were prosecuted accordingly, and the result of them was, on the 27th May, 1863, communicated by Earl Russell to Mr. Adams in the following note:[1]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *May* 27, 1863.

SIR: I had the honor, in my note of the 3d ultimo, to communicate to you the result of the inquiries which have been instituted by Her Majesty's government, on the receipt of your letter of the 26th of March, in which you denounced the Phantom steamer as being in course of construction at Liverpool as a vessel of war for the service of the so-styled Confederate States.

The evidence which I was then able to lay before you seemed to show that you had been misinformed in this respect; but as the depositions inclosed in your letters of the 16th, 19th, and 23d instant appeared to call for further inquiry, Her Majesty's government did not lose a moment in causing such further inquiry to be made, and I now proceed to communicate to you the result.

1st. With regard to the allegation that the Phantom has port-holes, the collector at Liverpool has obtained from the surveyor a report, from which it appears that, though the Phantom has ports on deck, it is evident from their size and situation that they are intended for the escape of water, and not for guns, which the strength of the deck is not sufficient to carry; moreover, the permanent fittings on deck would interfere with the working of guns. The surveyor adds that, in his opinion, the Phantom is intended for mercantile pursuits, but whether of a lawful character or for running the blockade there is no evidence to show.

2dly. The commissioners of customs, since the date of my last letter, have caused a strict watch to be kept upon the Phantom, but nothing has transpired worthy of special notice, and the several papers in regard to this vessel, including the depositions forwarded by you, having been submitted to the legal adviser of that board, he has reported that there is no evidence to warrant the slightest interference with her. Indeed, it is stated that during a recent interview between that officer and Mr. Squarey,
[38] the solicitor to the United States consul at Liverpool, Mr. Squarey admitted *that there was no case against the Phantom, and that the recoil of a heavy gun would shake her to pieces.

I have, &c.,
(Signed) RUSSELL.

In a subsequent note to Mr. Adams, dated 30th May, 1863, referring to the same subject, Earl Russell wrote as follows:[2]

The surveyor further observes that it is difficult for any one at all familiar with the construction and fittings of vessels intended for warlike purposes to account for the supposition that the Phantom is destined for such a service, her hull being of the most fragile character that can be conceived for a sea-going vessel, her steel-plates being but a quarter of an inch thick, and her iron frame of the same proportion.

The Phantom sailed on the 10th June, 1863, from Liverpool for Nassau, and is believed to have been employed as a blockade-runner. She was never used for war.

THE SOUTHERNER.

On the 3d June, 1863, Mr. Adams addressed to Earl Russell the following note respecting a vessel called the Southerner, alleged to be fitting out at Stockton-on-Tees:[3]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, June 3, 1863.

MY LORD: I have the honor to submit to your consideration copies of two depositions relating to a vessel which has been fitting out at Stockton-on-Tees, for some

[1] Appendix, vol. ii, p. 177. [2] Ibid., p. 179. [3] Ibid., p. 187.

purpose not usual in times of peace. This vessel is called the Southerner, and is the same to which I called your lordship's attention in my note of the 26th of March last. I think it can scarcely admit of a doubt that she is intended to carry on the same piratical mode of warfare against the commerce of the United States now practiced by the so-called Alabama and the Oreto. The person superintending her equipment appears to be the same who was equally active in the case of No. 290. I therefore feel it is my duty to call your lordship's attention to the case, in order that the proper measures may be taken in season to prevent any evil consequences to the peace of the two countries from the escape of such a vessel.

I have, &c.,
(Signed) CHARLES FRANCIS ADAMS.

In this note were inclosed two depositions, sworn by persons who had inspected the vessel. These depositions, however, furnished no evidence that she was in any way fitted or intended for war. It appeared that she had two small guns mounted on her decks; but these were afterward described by Mr. Dudley himself as "small guns, such as are usually found in passenger vessels of her size."

In answer to Mr. Adams's note, Earl Russell, on the 4th June, 1863, wrote to Mr. Adams as follows:[1]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *June* 4, 1863.

SIR: Your letter of yesterday respecting the Southerner was unfortunately not delivered at the foreign office till 8.50 p. m., some time after the business of the day was ended and the office closed.

I have, at the earliest possible hour this morning, communicated with the treasury and home department, and I have requested that orders may at once be sent by telegraph to the proper authorities, to pay immediate attention to the circumstances set forth in your letter.

I have, &c.,
(Signed) RUSSELL.

Orders were forthwith sent accordingly, and the collectors of customs at Stockton and Middlesborough-on-Tees, at West Hartlepool, and Liverpool, respectively, were instructed by telegraph to watch the vessel, to report any suspicious circumstance, and, should there be any legal proof of a violation of the foreign-enlistment act, to delay her, or, if necessary, detain her for the direction of the board of customs.

The collector of customs at Stockton, on the same day, (4th June, 1863,) reported concerning the Southerner as follows:[2]

She appears to me to be calculated for neither running nor fighting, but is certainly a very superior merchant-ship, built, I should say, expressly for carrying bales of cotton. The owners appear to me to have calculated, when they contracted about twelve months ago for building her, that the stock of cotton in America would have been
[39] from some cause or other released ere now. And, as * freights upon the article would have ruled high for fast vessels, they doubtless expected to reap great profits. For the present, however, they would seem to have been disappointed. And I understand that a sister ship, built in the Tyne for the same parties, has, for want of more profitable employment, been sent to Alexandria on some miserably low freight.

This report was confirmed by the collector and the surveyor of customs at West Hartlepool and the acting surveyor of customs at Liverpool. These officers reported that she appeared to be intended for commercial purposes; that her ports were far too small for working guns, and were designed for letting away water; and that the two guns on board of her were ordinary signal-guns, mounted on carriages such as are generally used by merchant-vessels of her class, and were, as so mounted, merely fit for firing signals with blank cartridge.[3]

On the 12th June, 1863, Earl Russell wrote as follows:[4]

[1] Appendix, vol. ii, p. 190.
[2] Ibid., p. 193.
[3] Ibid., pp. 201 and 207.
[4] Ibid., p. 203.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *June* 12, 1863.

SIR: At the same time that I communicated to the lords of the treasury and to the secretary of state for the home department, as I informed you in my letter of the 4th instant, the statements respecting the Southerner contained in your letter of the 3d instant, I submitted those statements also to the consideration of the law advisers of the Crown; and I have since learned from them that, in their opinion, the evidence supplied by those statements would not support a charge against the vessel that she is so equipped, or fitted out, or destined, as to constitute a breach of the provisions of the foreign-enlistment act, and that it consequently did not afford sufficient warrant for arresting the vessel.

The greater portion of the two depositions inclosed in your letter consists of hearsay matter, or statements of mere belief, which, according to American equally with British law, are inadmissible in a court of justice, and upon which Her Majesty's government could not legally proceed.

Attention will, nevertheless, continue to be paid to the vessel, with a view of guarding, as far as possible, against her being equipped in this country in a manner inconsistent with the provisions of the foreign-enlistment act.

I have, &c.,
(Signed) RUSSELL.

On the 3d July, 1863, he again wrote as follows:[1]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *July* 3, 1863.

SIR: I had the honor, on the 12th of June, to communicate to you the result of the inquiries which had, up to that time, been instituted by Her Majesty's government with reference to the statements respecting the vessel Southerner, contained in your letter of the 3d of that month. I however added that attention should nevertheless continue to be paid to that vessel, with the view of guarding, as far as possible, against her being equipped in this country in a manner inconsistent with the provisions of the foreign-enlistment act.

I have now to inform you, in fulfillment of that assurance, that Her Majesty's government considered it desirable to request the board of admiralty to associate with the custom-house surveyor at Liverpool an officer well acquainted with the build and equipment of vessels of war, with instructions to survey the Southerner, and to report the result to Her Majesty's government.

That officer's report has now been received, and I have the honor to acquaint you that it appears from it that the Southerner is an ordinary-built iron screw steam passenger and cargo vessel of 1,569 tons, fitted with engines of 300 horse-power; that she is also fitted with top-gallant, forecastle, and poop-deck, with deck-house continuous fore and aft with the same, in the same manner as the Inman line of screw-boats sailing between Liverpool and New York; that she is fitted up aft, under the poop-deck, with cabin accommodation for about sixty-six saloon passengers; the forecastle for the crew, and deck-houses for the ship's officers; that her holds are appropriated for the reception of cargo, and that she is fitted with steam-winches for working the same.

The admiralty surveyor further reports that he finds, upon examination, that her top sides are of iron plates three-eighths of an inch thick, and are in no way fitted or secured for the working of guns; and that she has two gangways fitted one on each side amidships, for the purpose of working her cargo.

The surveyor, in conclusion, says that, upon fully examining the Southerner, he cannot find anything, with regard to construction or fittings, that would lead him to suppose that she was intended for belligerent purposes.

I have, &c.,
(Signed) RUSSELL.

On the 9th August, 1863, the Southerner sailed from Liverpool, with a clearance for Alexandria, via Cardiff. She proceeded to Alexandria, and was employed in the Mediterranean in the conveyance of cotton and of passengers, and was never used for war.[2]

[40] ***THE ALEXANDRA.**

On the 28th March, 1863, application was made by Mr. Dudley to the collector of customs at Liverpool for the seizure of a vessel stated to

[1] Appendix, vol. ii, p. 208. [2] Ibid., p. 209.

be lying in one of the docks in the port of Liverpool, and called the Alexandra.[1] Mr. Dudley at the same time laid before the collector six sworn depositions, one made by himself, and the others by various other persons, tending to show that she was constructed for warlike use, and that she was intended for the service of the Confederate States.

Copies of the depositions were, on the 31st March, received by Earl Russell from Mr. Adams, together with a note, in which Mr. Adams stated that he would remit no exertion to place in the hands of Her Majesty's government all the information that could be obtained. The receipt of this note was on the same day acknowledged by Earl Russell, and instructions were immediately given that whatever measures could legally be taken in view of the facts thus brought to the knowledge of Her Majesty's government should be adopted.[2] The depositions were at the same time laid before the law-officers of the Crown, in order that they might advise the government thereon.

On the 3d April, 1863, Earl Russell further wrote to Mr. Adams, as follows:[3]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *April* 3, 1863.

SIR: With reference to my letter of the 31st ultimo, I have the honor to inform you that the secretary of state for the home department has instructed the mayor of Liverpool to cause immediate inquiries to be made with the view of ascertaining whether the Alexandra, denounced by you in your letter of the 30th ultimo, is being equipped, furnished, fitted out, or armed with the intention of her being employed in the service of the so-called Confederate States, with intent to commit hostilities against the Federal Government of the United States; and if this should appear to be the case, the mayor is further instructed to adopt whatever steps can legally be taken in the matter.

I have, &c.,
(Signed) RUSSELL.

On the 5th April, 1863, the Alexandra was, pursuant to the direction of Her Majesty's government, seized by the officers of the customs at Liverpool, under the powers created by the seventh section of the foreign-enlistment act;[4] and proceedings were soon afterward instituted in the court of exchequer by the attorney-general on behalf of the Crown, in order to obtain a condemnation of the ship under the provisions of that act.

Mr. Adams was informed that orders to seize the vessel had been given, and he, on the 6th April, 1863, wrote to Earl Russell as follows:[5]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, April 6, 1863.

MY LORD: I have the honor to acknowledge the reception of your lordship's note of the 5th instant, in answer to mine of the 30th ultimo, making certain representations in regard to the character of a vessel in Liverpool known as the Alexandra. It is with the most lively satisfaction that I learn the decision of Her Majesty's government to detain that vessel. Believing that such an act, at the present moment, is calculated to defeat the sanguine hopes of the common enemies of both nations, to sow the seeds of dissension between them, I shall remit no effort to procure all the information possible to support it. To that end I have, agreeably to your lordship's suggestion, sent the necessary instructions to the consul of the United States at Liverpool to put himself in communication with the authorities designated at that place to pursue the subject.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[1] Appendix, vol. ii, p. 222.
[2] Ibid., p. 227.
[3] Ibid., p. 229.
[4] Ibid., p. 232.
[5] Ibid., p. 231.

On the 22d June, 1863, the cause came on for trial in the court of exchequer, before the lord chief baron (the chief judge of that court) and a special jury; the attorney-general, the solicitor-general, and the Queen's advocate, with two other members of the bar, conducting the case for the Crown. The trial occupied three days. At the close of the third day the jury returned a verdict against the Crown and in favor of the persons claiming to be owners of the ship.[1] Application was thereupon made on behalf of the Crown to the four judges of the court of exchequer sitting as a collective court, to obtain a new trial of the cause, on the grounds, first, that the instructions which had been delivered by the lord chief baron to the jury as to the intent and interpretation of the law were erroneous; and, secondly, that the verdict was con-
[41] trary to the weight of *testimony. After long argument, the hearing being continued during six days, this application failed, the four judges composing the court being equally divided in opinion, and judgment was given against the Crown.[2] All the judges pronounced their opinions *seriatim* in open court. From this judgment an appeal was made on behalf of the Crown to another tribunal, (the exchequer chamber,) composed of all the judges of the superior courts of common law sitting collectively; but it was adjudged, after argument, that the jurisdiction assigned by law to this tribunal did not authorize it to entertain the appeal.

Costs and damages amounting to £3,700 were paid by the Crown, as the defeated party, to the claimants of the ship.

While these proceedings were pending, and after the verdict of the jury had been delivered, Mr. Seward addressed to Mr. Adams a dispatch, dated the 11th July, 1863, which contained the following instructions in regard to the case of the Alexandra:

1st. You are authorized and expected to assure Earl Russell that this Government is entirely satisfied that Her Majesty's government have conducted the proceedings in that case with perfect good faith and honor, and that they are well disposed to prevent the fitting out of armed vessels in British ports to depredate upon American commerce and to make war against the United States.

2dly. This Government is satisfied that the law-officers of the Crown have performed their duties in regard to the case of the Alexandra with a sincere conviction of the adequacy of the law of Great Britain, and a sincere desire to give it effect.

3dly. The Government of the United States does not descend to inquire whether the jury in the case were or were not impartial. It willingly believes they were so, and it accepts the statement made with so much unanimity by all the reporters of the case, that the judge who presided at the trial made the bench responsible for the verdict by the boldness and directness of his rulings against the prosecution.

4thly. Great Britain being a free and constitutional country, and the proceedings in the case of the Alexandra having been thus far conducted by the government in good faith, and according to law, the United States would not be justified in deeming the verdict rendered by the jury a cause of national complaint, provided that the government prosecutes an appeal to the higher courts until it be determined in the court of last resort whether the law is adequate to the maintenance of the neutrality which Her Majesty has proclaimed, and provided, also, that in the mean time the Alexandra and other vessels that may be found violating or preparing to violate the law be prevented, so far as the law may allow, from leaving British ports to prosecute their work of devastation.

During the whole course of these proceedings, viz, from the 5th April, 1863, to the 24th April, 1864, the Alexandra remained under seizure and in the possession of the officers of customs.

At the end of that time, the executive having no legal power to detain her, she came again into the possession of Messrs. Fawcett, Preston & Co., the persons claiming to be her owners, by whom she was, in June, 1864, sold to a Mr. Henry Lafone, a merchant residing at Liver-

[1] Appendix, vol. iii, p. 56. [2] Ibid., p. 57.

pool. By her new owner her name was then changed to "The Mary;" her fittings on deck and below were altered and made apparently suitable to a vessel of commerce; and in July, 1854, she sailed from Liverpool for Bermuda and thence to Halifax. Mr. Seward, on being informed of her arrival there, wrote as follows to Mr. Hume Burnley, Her Britannic Majesty's chargé d'affaires at Washington:[1]

Mr. Seward to Mr. Burnley.

DEPARTMENT OF STATE,
Washington, September 13, 1864.

SIR: This Department has been informed that the steamer Mary, which formerly, under the name of the Alexandra, was charged in the British courts with having been built for the naval service of the insurgents, has arrived at Halifax for the supposed purpose of there being armed and equipped for that service.

It is consequently suggested that you communicate with the governor of Nova Scotia, in order that the hostile designs of that vessel against the United States and their shipping may not be carried into effect from any port within his jurisdiction.

I have, &c.,
(Signed) WILLIAM H. SEWARD.

A copy of this note was at once transmitted by Mr. Burnley to the lieutenant-governor of Nova Scotia, who replied as follows:

Lieutenant-Governor Macdonnell to Mr. Burnley.

GOVERNMENT HOUSE,
Halifax, Nova Scotia, September 30, 1864.

SIR: I have the honor to acknowledge the receipt of yours of the 13th instant, which did not reach me till the 28th instant. Your letter incloses a communi-
[42] cation from Mr. Seward, representing that "the Mary, formerly the Alexandra, has arrived at Halifax, for the supposed purpose of being armed and equipped for the confederate service.

Mr. Seward therefore suggests that you should communicate with me, in order that the hostile designs of that vessel against the United States and their shipping may not be carried into effect from any port within my jurisdiction.

In reply, I have to state that, in future, as heretofore, my most strenuous exertions shall be directed to maintaining within the neutral waters of this portion of Her Majesty's dominions the strictest observance of those orders which have been issued for my guidance in reference to belligerent cruisers, whether Federal or confederate.

I cannot, however, interfere with any vessel British-owned, in a British harbor, on mere suspicion; nevertheless, I have so decided a determination to prevent any abuse of the accommodation afforded by this port to any party, that I have instituted inquiry, for my own satisfaction, into the rumored destination of the Mary. I have even directed that the Mary shall be watched, and am prepared to interfere, if any illegal equipment of that vessel, for warlike purposes, be attempted in this province.

At the same time you may inform Mr. Seward that the result of my inquiries hitherto leads me to suppose that the Mary, although originally strongly built, and apparently intended for warlike purposes, is now lying here an embarrassment to her owners, unsalable and unserviceable, either as an ordinary merchantman or a cruiser. Her speed under steam does not exceed four and a half knots, and I believe she is considered a failure, whatever may have been her original destination. Therefore no difficulty is likely to arise in her case.

I have, &c.,
(Signed) R. J. MACDONNELL,
Lieutenant-Governor, &c.

The Mary returned in November from Halifax to Bermuda, and thence proceeded to Nassau, where, on the 13th December, 1864, she was seized by order of the governor, and proceedings were instituted against her in the vice-admiralty court of the colony,[2] it having been discovered that she had taken on board at Bermuda certain packages the contents of which afforded some evidence that a design existed of employing her in the naval service of the Confederate States. The cause was

[1] Appendix, vol. ii, p. 272. [2] Ibid., p. 286.

heard on the 22d and 23d May, 1865, and on the 30th May the court decided that there was no "reasonably sufficient" evidence of illegal intent to support a sentence of forfeiture, and the vessel was accordingly released.[1] The war had by that time terminated, and all armed resistance to the authority of the Government of the United States was at an end. The costs and expenses which the colonial government incurred by the seizure of the vessels amounted to £311 18*s.*

El Tousson and El Monassir, (iron-clad rams.)

On the 7th July, 1863, Mr. Dudley made formal application to the collector of customs at Liverpool to seize, under the provisions of the above-mentioned act, a vessel described by him (Mr. Dudley) as "an iron-clad steam vessel of war," launched three days before, and then lying at Birkenhead.[2] He at the same time laid before the collector several depositions on oath, sworn by himself and various other persons, in which it was stated that two iron-clad steamships, similar in all material respects to each other, had for many months been in process of construction in the ship-building yard of Messrs. Laird & Co., ship-builders of Birkenhead; that they were of very great strength, and manifestly designed for vessels of war; that each was furnished with a ram or piercer, of wrought-iron, projecting under the water-line, and was also prepared to receive two iron turrets for heavy guns, and that two of such turrets were being constructed in the yard. One only of the said vessels had been launched, and to this Mr. Dudley's application related. The said depositions contained also allegations tending to show that the vessels were intended for the naval service of the Confederate States.

Copies of these depositions and of Mr. Dudley's application were, on the 11th July, 1863, sent by Mr. Adams to Earl Russell.[3]

On the 13th July these depositions were referred to the proper departments of the government, and to the law-officers of the Crown.[4]

That these two vessels were in course of construction had for a long time been known to Mr. Dudley, and he had sent information respecting them to the Government of the United States, commencing in the month of July, 1862. It was Mr. Dudley's opinion that they would be most formidable ships, possessing more power and speed than any iron-clads previously built, and so heavily plated as to be invulnerable.

Further depositions in support of the application were subsequently submitted by Mr. Dudley to the collector of customs, and transmitted by Mr. Adams to Earl Russell.[5]

The second of the two vessels above mentioned was launched on the 29th August, 1863; and an application, supported by sworn
[43] depositions, for the seizure of her was, on *the 1st September, 1863, made by Mr. Dudley to the collector of customs at Liverpool. Copies of these further depositions were sent by Mr. Adams to Earl Russell.[6]

Her Majesty's government had, at the earliest moment, given directions that a strict watch should be kept over the vessels, and that diligent inquiry should be made for the purpose of ascertaining their character and destination.

It was at first reported that they were built for the government of France. Subsequently, they were claimed by a M. Bravay, a French

[1] Appendix, vol. ii, p. 286.
[2] Ibid., p. 317.
[3] Ibid., p. 315.
[4] Ibid., p. 323.
[5] Ibid., pp. 326, 333.
[6] Ibid., pp. 345, 349.

merchant and member of a firm carrying on business in Paris, who stated that he had purchased them on account of the Pasha of Egypt. M. Bravay had, in fact, in August, 1863, made an application to the French government, stating the alleged purchase, and requesting that the good offices of the French embassy in London might be used in his behalf, in order to enable him to send the vessels to Alexandria;[1] and it further appeared that he had, in February, 1863, made a claim upon the Pasha's government on account of two iron-clad vessels of war, which he affirmed that he had been ordered to procure by the then Pasha's predecessor, (who died in 1862,) and for which he alleged that he had paid a large sum on account.[2] Finally, he produced to the British naval attaché at Paris a number of papers relating to the vessels, and furnished him with a copy of a legal instrument, dated 18th July, 1863, from which it appeared that the iron-clads had, in fact, been built to the order of Bullock, but that Bullock's interest in them had been transferred, or purported to be transferred, to Bravay.[3]

On the 28th August, 1863, Her Britannic Majesty's consul-general in Egypt reported to the government that the Pasha of Egypt refused to ratify the order alleged to have been given by his predecessor, or to purchase the vessels. This report was received by the government on the 5th September.[4]

On the same 5th September the builders of the vessels, in reply to an inquiry addressed to them by the under-secretary of state for foreign affairs, wrote to him as follows:[5]

Messrs. Laird Brothers to Her Majesty's foreign office.

BIRKENHEAD, *September* 5, 1863.

SIR: We have received your letter of the 4th instant, stating that Lord Russell has instructed you to request us to inform him, with as little delay as possible, on whose account and with what destination we have built the iron-clad vessels recently launched and now in course of completion at our works.

In reply, we beg to say that although it is not usual for ship-builders to declare the names of parties for whom they are building vessels until the vessels are completed and the owners have taken possession, yet, in this particular case, in consequence of the many rumors afloat, coupled with the repeated visits of Mr. Morgan, the surveyor of customs, to our works, we thought it right to ask permission of the parties on whose account we are building the vessels to give their names to the English government, in the event of such information being asked for officially in writing.

They at once granted us the permission we sought for.

We therefore beg to inform you that the firm on whose account we are building the vessels is A. Bravay & Co., and that their address is No. 6 Rue de Londres, Paris, and that our engagement is to deliver the vessels to them in the port of Liverpool when they are completed according to our contract.

The time in which we expect to have the first vessel so completed is not less than one month from this date, and the second not less than six or seven weeks from this date.

We are, &c.,
(Signed) LAIRD BROTHERS.

A. H. LAYARD, Esq., M. P.

The inquiries directed by Her Majesty's government were actively prosecuted, and, although they led to no conclusive result, nevertheless convinced the government that there was a reasonable prospect of obtaining sufficient evidence as to the destination of the vessels. On the 9th September, 1863, both vessels being then in an unfinished state, the following notice was sent to the builders by the secretary of the treasury:

[1] Appendix, vol. ii, p. 339.
[2] Ibid., p. 315.
[3] Ibid., p. 372.
[4] Ibid., p. 353.
[5] Ibid., p. 355.

Her Majesty's Treasury to Messrs. Laird Brothers.

TREASURY CHAMBERS, *September* 9, 1863.

GENTLEMEN: I am desired by my lords commissioners of Her Majesty's treasury to acquaint you that their lordships have felt it their duty to issue orders to the commissioners of customs that the two iron-clad steamers now in the course of completion in your dock at Birkenhead are not to be permitted to leave the Mersey until satisfactory evidence can be given of their destination, or at least until the inquiries which are now being prosecuted with a view to obtain such evidence shall have been brought to a conclusion.

I am, &c.,
(Signed) GEORGE A. HAMILTON.

MESSRS. LAIRD & CO., *Birkenhead.*

[44] * The builders replied as follows:[1]

In reply, we beg to inform you that we have forwarded a copy of your letter to Messrs. A. Bravay & Co., at No. 6 Rue de Londres, Paris, on whose account we are building the vessels, and to whom we beg to refer you for further information; inasmuch as our engagement with them is to deliver the vessels at the port of Liverpool when they are completed according to our contract.

The builders having informed the collector of customs that they wished to take the vessel which was nearest completion (named El Tousson) for a trial-trip, in order to test the machinery, but with an assurance that she should be brought back again, they were told that circumstances had come to the knowledge of the government which gave rise to an apprehension that an attempt might be made, without the privity and against the intention of the builders themselves, to carry away the vessel by force while on such trial-trip.[2] The government, therefore, could not permit the trip to take place, unless on the condition that a force of seamen and marines, from Her Majesty's channel fleet, (which was then in the Mersey,) sufficient to defeat any such attempt, should be placed on board of the vessel.

On the 7th October, 1863, the builders were told that, in consequence of further information received by the government, it was deemed necessary to place an officer of the customs on board the vessel named El Tousson, with authority to seize her on behalf of the Crown in the event of any attempt being made to remove her from her actual position, and that he was instructed to obtain from the commanding officer of Her Majesty's ship of war Majestic any protection which might be necessary to support him in the execution of his duty.[3]

On the 9th October, 1863, orders were issued to seize both the vessels, and they were seized accordingly.[4] The vessel remained under seizure from that time until the month of May, 1864, when they were, by agreement, sold and transferred to Her Majesty's government for the aggregate sum of £220,000.[5] The evidence which the government had up to that time been able to obtain was so imperfect as to make the event of a trial doubtful; and in agreeing to the purchase, Her Majesty's government was mainly actuated by a desire to prevent by any means within its power (however costly) vessels of so formidable a character, constructed in a British port, from passing directly or indirectly into the hands of a belligerent.

THE CANTON, OR PAMPERO.

On the 18th October, 1863, Earl Russell received from Mr. Adams the following note, (with an inclosure:)[6]

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[1] Appendix, vol. ii, p. 358. [2] Ibid., p. 367. [3] Ibid., p. 387.
[4] Ibid., pp. 388, 389, *et seq.* [5] Ibid., pp. 457–459. [6] Ibid., p. 467.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, October 17, 1863.

MY LORD: It is with great regret that I find it my duty once more to call your lordship's attention to the efforts making in this kingdom to aid the insurgents in America in carrying on their resistance to the Government of the United States. I have strong reason for believing that, in addition to a very formidable steam-ram now in process of construction at the port of Glasgow, but not yet so far advanced as fully to develop her character, there is another steamer ready to be launched, called the Canton, having all the characteristics of a war-vessel, which is about to be fitted up and dispatched with the same intent from the same place. I beg leave to submit to your lordship's consideration some extracts from a letter addressed to me by W. L. Underwood, esq., the consul of the United States, giving some information in regard to this case. Mr. Underwood himself entertains no doubt of the destination of this vessel, although from the secrecy used in the process of construction and preparation, itself a cause of suspicion, he has been slow in gaining evidence on which to base a representation.

Not doubting that Her Majesty's government will take all suitable measures to ascertain the correctness of these allegations, I pray, &c.

(Signed) CHARLES FRANCIS ADAMS.

The extracts inclosed in the above note contained a description of the Canton.

The information thus furnished by Mr. Adams was immediately communicated to the proper departments of the government, and the officers of customs and local authorities were instructed to make immediate inquiry, and to take such legal measures as might prevent any attempt to infringe the law.

The inquiries thus directed were pursued for a considerable time with very little result. The vessel was carefully examined, both by the surveyor of the customs and by the commanding officer of Her Maj-
[45] esty's ship Hogue, stationed in the Clyde; and the specifi*cations on which she was constructed, as well as the contract for building her, were produced and exhibited by the agents through whom the contract had been made. It appeared that, though she was being fitted up as a passenger-ship, there were some peculiarities in her construction such as to render her capable of being converted, not indeed into a regular ship of war, but into a vessel serviceable for war purposes. She had been contracted for by a person resident in London, through the agency of a Glasgow firm; and this firm, as well as her builders, stated that they believed her to be intended for the merchant service, and were not aware of any intention to dispose of her to the Confederate States.

The vessel was launched on the 29th October, 1863, (her name having been previously changed to the "Pampero;")[1] and the United States consul at Glasgow soon afterward made a formal application that she might be seized, supporting it by several depositions on oath, to which others were afterward added from time to time.[2] No evidence whatever of her being intended for the confederate service, beyond vague rumor and hearsay, was furnished by the United States consul in these depositions or otherwise, nor by Mr. Adams.

By the end of November, however, the inquiries directed by the government had led to the production of some evidence, and it was eventually ascertained that the real owners of the vessels were several persons resident respectively in London, Manchester, Glasgow, and Dumbarton, and that they were under a contract to sell her to one Sinclair, calling himself a citizen of the Confederate States; but that Sinclair had lately been, and then was, desirous of canceling the contract. A letter from Sinclair, asking that the contract might be can-

[1] Appendix, vol. ii, p. 478. [2] Ibid., p. 486.

veled, was placed in the hands of the law-officers of the Crown for Scotland, and was as follows:[1]

LONDON, *September* 24, 1863.

MY DEAR SIR: When I made a contract with you in November last for the building of a steamship, I was under the impression, having taken legal advice, that there was nothing in the law of England that would prevent a British subject from building such a vessel for any foreign subject as a commercial transaction. Although the recent decision of the court of exchequer in the case of the Alexandra would seem to sustain the opinion, yet the evident determination of your government to yield to the pressure of the United States minister, and prevent the sailing of any vessel that may be suspected of being the property of a citizen of the Confederate States, is made so manifest that I have concluded it will be better for me to endeavor to close that contract referred to, and go where I can have more liberal action.

In these circumstances I desire to put an end to our transaction, by your returning me the cotton certificates which I delivered to account of price, and my canceling the contract.

The increased value of shipping since the date of our transaction will, I have no doubt, enable you at once to meet my wishes in this respect. I shall feel much obliged by an early reply.

(Signed) G. SINCLAIR.

EDWARD PEMBROKE, Esq.

On the 10th December the Pampero was, by direction of Her Majesty's government, seized by the collector of customs at Glasgow, and legal proceedings were instituted to obtain a declaration of forfeiture.[2] The case was appointed to be tried in April, 1864, when, no defense being made, a verdict was entered for the Crown, and the vessel was declared forfeited. She remained under seizure until October, 1865, and was then given up to her owners, all reasons for detaining her being at an end.[3]

THE AMPHION, THE HAWK, THE VIRGINIA, THE LOUISA ANN FANNY, THE HERCULES.

In the year 1864 representations were made by Mr. Adams to Earl Russell respecting two vessels named the Amphion and Hawk; and, in the year 1865, respecting three others, the Virginia, the Louisa Ann Fanny, and the Hercules, all of which he alleged to be fitting out in ports of the United Kingdom under suspicious circumstances, and to be probably destined for the naval service of the Confederate States. In each of these cases the information furnished was immediately transmitted to the proper departments of the government, and careful inquiry was made. In none of them were any reasonable grounds of suspicion found on examination to exist, which would have justified the executive in interfering, and none of the suspected vessels were ever in fact armed or used for purposes of war. The dates at which Mr. Adams's representations in these several cases were respectively first received, and were referred for inquiry, were as follows:

The Amphion.—Received March 18, 1864; referred on the same day to the home department.[4]

[46] * *The Hawk.*—Received April 16, 1864; referred to the treasury, the home department, and the lord advocate, (the law-officer of the Crown for Scotland,) April 18, 1864.[5]

The Virginia and Louisa Ann Fanny.—Received January 30, 1865; referred to the treasury February 1, 1865.[6]

The Hercules.—Received February 7, 1865; referred to the treasury and to the home department February 8 and 9, 1865.[7]

[1] Appendix, vol. ii, p. 511.
[2] Ibid., p. 520.
[3] Ibid., p. 533.
[4] Ibid., pp. 566, 567.
[5] Ibid., pp. 543, 544.
[6] Ibid., pp. 595, 596.
[7] Ibid., p. 589.

In acknowledging the receipt of Mr. Adams's note respecting the Hercules, Earl Russell wrote as follows:[1]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *February* 8, 1865.

SIR: I have received your letter dated the 7th instant, and delivered at the foreign office at a late hour yesterday evening after the close of business; but not being marked immediate, it did not come under the notice of the under-secretary of state until 1 p. m. to-day.

The matter shall be immediately attended to, but, in the mean time, I wish to call your attention to the dates of the letters which you inclose. The first letter of the United States consul at Liverpool is dated the 2d instant, and affirms that a steamer named the Hercules is fitting out in the Clyde for the confederate service, and that this vessel is to be ready for sea in eight days. The second letter which you transmit to me is dated Glasgow, the 4th instant, and contains further information respecting this vessel, and states, moreover, that the trial trip is to take place to-day.

In a former instance I was able by means of the lord advocate to prosecute the owners of a vessel building in the Clyde, and to get a verdict entered by consent, which defeated the purpose of the confederate agent. But these operations are very quick, and unless I have timely notice I can have but little hopes of stopping these nefarious transactions.

I have, &c.,
(Signed) RUSSELL.

The attention of the government had been directed to the Amphion and Hawk, and inquiry made respecting them, before the receipt of any representation from Mr. Adams concerning those vessels. A vessel called the Ajax, as to which no representation had been made or information furnished, but which was suspected by some of her crew of being intended for the confederate service, was examined and searched by the officers of customs at Queenstown, and afterward, under instructions from the government, by the colonial authorities at Nassau.[2] She was not, however, found to be adapted or intended for warlike use, and was never applied to such use.

In sending information to Mr. Adams respecting the Virginia, Mr. Dudley, in a letter dated the 27th January, 1865, wrote as follows:[3]

Like the Sea King, any steamer now destined for privateering fits away as a commercial vessel, and there is nothing about her movement before she leaves port, or until within a few hours of her leaving, when she may suddenly change owners, and her master be given authority to sell at a given sum out of British waters, to create any mistrust of the purpose of those who control her here.

Under such a mode of operations it is next to impossible for us to get testimony in season, and sufficiently strong, to ask for their detention. The only course left me, therefore, is to call your attention to all cases offering any reasonable ground of suspicion, and leave them to be disposed of as you may deem most expedient.

SUMMARY.

The preceding statement of facts shows the general course of conduct pursued by Her Britannic Majesty's government, in relation to vessels alleged to be, or suspected of being, fitted out or prepared within British territory for belligerent use. It includes all the cases (except those of the Florida and Alabama, which will be presently stated) in which information that any vessel was being built, equipped, or prepared for sea in any British port, and intended, or supposed to be intended, for warlike use, was received by, or came to the knowledge of, Her Majesty's government before the departure of such vessel.

It will have been seen—

1. That in every case directions were given, without the least delay, for investigation and inquiry on the spot by the proper officers of gov-

[1] Appendix, vol. ii, p. 582.
[2] Ibid., pp. 575, 590.
[3] Ibid., p. 596.

ernment; and these officers were ordered to keep a watchful eye on the suspected vessel; and the directions and orders so given were executed.

2. That in some cases the attention of the government had been [47] directed, before the* receipt of any communication from Mr. Adams, to vessels as to which there appeared to be ground for suspicion.

3. That as soon as any evidence was obtained it was submitted, without delay, to the law-officers of the Crown; and they were called upon to advise as to the proper course of proceeding.

4. That in every case in which reasonable evidence could be obtained the vessel was seized by the officers of the government, and proceedings were instituted against her in the proper court of law. By reasonable evidence is understood testimony which, though not conclusive, offered nevertheless a reasonable prospect that the government might be able, when the time for trying the case should arrive, to sustain the seizure in a court of law.

5. That in several of the cases in which a seizure was made the government found itself unable, or uncertain whether it would be able, to sustain the seizure by sufficient evidence, and was under the necessity of either releasing the vessel and paying the costs of the trial and detention, or of purchasing her at the public expense.

6. That in every one of the cases enumerated either the information furnished to the government proved to be erroneous, and the supposed *indicia* of an unlawful intention to be absent or deceptive, or this intention was defeated or abandoned by reason of the measures taken and the vigilance exercised by Her Majesty's government.

7. That it is easy to infer special adaptation for war from peculiarities or supposed peculiarities of construction which are really equivocal; and such inferences are liable to be fallacious, especially in cases where the vessel is constructed with a view to some employment which, though commercial, is out of the ordinary course of commerce.

CASE OF THE ANGLO-CHINESE FLOTILLA.

The steady determination of Her Britannic Majesty's government to guard against any act or occurrence which might be supposed to cast a doubt on its neutrality, and its readiness even to go beyond, for this purpose, the strict measure of its international obligations, were exemplified in the case of the iron-clad rams, and were even more strikingly shown in that of the flotilla of gun-boats equipped for service in China.

In March, 1862, the Chinese government gave authority to Mr. Lay, inspector-general of Chinese customs, then on leave in England, to purchase and equip a steam-fleet for the Emperor's service;[1] and a sum of money was placed at his disposal for the purpose.

Mr. Lay accordingly entered into an agreement with Captain Sherard Osborn, an officer in Her Majesty's navy, according to which the latter was to take command-in-chief of the fleet, receiving orders from the Chinese government through Mr. Lay. Her Majesty's government, by orders in council, gave permission to enlist officers and men for this service.

In September, 1863, Captain Sherard Osborn arrived in China with the flotilla, consisting of six vessels of war. These were the Pekin, China, and Keang-soo, of six guns each, the Kwangtung and Tien-tsin of four guns, and the Amoy of two, the Thule yacht, and the Ballarat store-ship.

[1] Appendix, vol. ii, p. 681.

A difference, however, arose between the Chinese government on the one side, and Mr. Lay and Captain Osborn on the other, as to the conditions on which Captain Osborn was to hold his command; and, this difference not having been adjusted, Captain Osborn informed Sir F. Bruce, Her Majesty's minister at Pekin, that the force would be disbanded. He asked at the same time whether Sir F. Bruce saw any objection to his surrendering to the Chinese government the eight ships which he had brought out.[1]

Sir F. Bruce thereupon informed the Chinese government and Captain Osborn of his conviction that Her Majesty's government would not have consented to the organization of this powerful squadron, unless on the understanding that it was to be placed under the orders of an officer in whose prudence and high character they had full confidence, and that he could not consent to the ships and stores being handed over to the Chinese government without instructions to that effect from Her Majesty's government.[1]

Among other reasons for this course Sir F. Bruce reported to Her Majesty's government that the ships were not such as the Chinese could manage, and that it would not be safe to sell them on the coast, as they might fall into the hands of hostile daimios in Japan, or be bought for employment as confederate cruisers in those seas.[2] The following letter from the United States minister at Pekin to Sir F. Bruce shows that he was equally alive to the latter danger:

[48] *Mr. Burlingame to Sir F. Bruce.*[3]

PEKIN, *November* 7, 1863.

SIR: When the Chinese government refused the doings of its agent, Mr. Lay, and there was nothing left for Captain Osborn but to dissolve the force of the flotilla, the question was now it could be done with safety. I feared that the ships might fall into the hands of the confederates, who are supposed to have agents in China; and then there was the common apprehension from lawless men on the coast in the interest of the Taepings as well as from pirates, and the desire of the daimios in Japan to procure steamers at any price.

It was clear that the Chinese could do nothing of themselves with the steamers, and that, unless something were done by you, they would certainly fall a prey to one of these several dangers. In my solicitude on account of the rebels in my own country, I made an earnest protest against the delivery of the ships to the Chinese. You responded, in that spirit of comity which has ever distinguished our relations, that the ships should be taken back to England, and that no effort on your part should be spared to prevent them from taking a direction against the interests of my country.

Though subsequent events made it necessary for the ships to take the direction indicated by the desire of the Chinese themselves, still I should be wanting in appreciation of your conduct did I not mark it with my most heartfelt thanks, and at as early a period as possible bring it to the attention of my Government.

I have, &c.,
(Signed) A. BURLINGAME.

It was eventually arranged that Captain Osborn should send part of the flotilla to England, take the other portion to Bombay, and sell them all on account of the Chinese government.

Captain Osborn accordingly took three vessels, the Keang-soo, (6 guns,) Kwangtung, (4 guns,) and Amoy, (2 guns,) and the dispatch-boat Thule, to Bombay, where he arrived in January, 1864.[4] At his request the government of India took charge of the vessels and the military stores on board of them, and he then proceeded to England, where he arrived in February. The rest of the flotilla, consisting of the

[1] Appendix, vol. ii, p. 682.
[2] Ibid., p. 686.
[3] Ibid., p. 689.
[4] Ibid., p. 692.

Pekin and China, (6 guns,) the Tien-tsin, (4 guns,) and the Ballarat store-ship, were sent to England, where they arrived in April.[1]

On the first intelligence of the arrangement made with the Chinese government for disposing of these vessels in India and England, a letter was addressed by the foreign office to the admiralty, India office, and colonial office,[2] stating that the "vessels are understood to be fully equipped for belligerent purposes, and Her Majesty's government are of opinion that it is incumbent upon them to take any precaution that may legally be within their power to prevent them from passing in their present state into the hands of any power or state engaged in hostility with another power or state in amity with Her Majesty."

It was therefore desired "that the attention of the naval, colonial, or Indian authorities, both at home and on any station abroad within Her Majesty's dominions, where the vessels may be expected to be met with, should be called to the necessity of taking such measures as may be legally within their power in furtherance of the views of Her Majesty's government in this matter; and specifically as regards Captain Osborn, who is an officer in Her Majesty's naval service, that he should be pointedly cautioned against disposing of any of the vessels to be used in the naval service of a belligerent power."

Sir F. Bruce, at Pekin, and Sir H. Parkes, at Shanghai, were instructed to make a similar communication to Captain Osborn, in case that officer was still in China when the dispatch reached them.

In anticipation of these instructions Commodore Montresor had warned Captain Osborn on his arrival at Bombay against selling the vessels, and had joined with the governor in remonstrating against any attempt to sell the Thule, which, as being an unarmed dispatch-boat, did not, in Captain Osborn's opinion, come within the same category as the armed vessels, but which the two former officers considered open to objection, as having been equipped for naval service, and capable of being adapted in some degree to belligerent purposes.[3]

The Thule was, notwithstanding, advertised for sale in Bombay on the 16th of February, after Captain Osborn's departure; but the government of Bombay forbade the sale. Orders were sent from home in April to permit the sale of the Thule, but to retain the other vessels. Care was also to be taken that the Thule was not equipped as a vessel of war for either of the belligerent parties in America.[4]

The sale, however, did not take place.

[49] *The three armed vessels sent to England arrived in April, and were moored in Woolwich dock-yard. The Ballarat, being merely a store-ship, did not come under the custody of the government, and was sold.

The admiralty refused to purchase the vessels for the government; and it was settled that they should be placed at moorings in the Medway, and there retained until the objections to their sale might be removed, and that any expenses incurred by this course should be defrayed by Her Majesty's government.[5]

In the meanwhile Captain Osborn, learning that it was not the intention of the government to purchase the vessels left in charge of the Bombay authorities, wrote to ask permission to relieve himself of all responsibility, by substituting a mercantile firm at Bombay as the agents to carry out Sir Frederick Bruce's instructions for the sale of the vessels on account of the Chinese government.[5]

The matter was referred to the law-officers, who reported that the sale

[1] Appendix, vol. ii, p. 700.
[2] Ibid., p. 684.
[3] Ibid., p. 695.
[4] Ibid., pp. 700, 703.
[5] Ibid., p. 701.

within Her Majesty's dominions, even to a belligerent power, of armed ships of war, already legally equipped with a view to a different object, under Her Majesty's license, would not be illegal. The foreign enlistment act did not, in their opinion, prohibit such a sale. Her Majesty's government had therefore two alternatives. It might, on the one hand, inform Captain Osborn that it did not interpose any objection to his selling the vessels to any person or in any way that he might think fit; such sale (provided no addition were made to their equipments or furniture, before delivery to the purchaser, for the purposes of any belligerent power) being in no way contrary to law. If, on the other hand, the government were not prepared to take this course, it was morally bound to take upon itself the responsibility from which Captain Osborn desired to be freed.

Captain Osborn, the admiralty, and India office were thereupon apprised that Her Majesty's government could not at present sanction the sale of the vessels in India, but was prepared to take on itself the responsibility of detaining the vessels in question unsold until further orders. A similar communication was made to the Chinese government, through Sir F. Bruce, with the assurance that the Chinese government should not ultimately lose the value of the vessels.[1]

An offer was made in December, 1864, by Messrs. Ritherdon & Thompson, to purchase the three vessels in England on behalf of a foreign government.[2] They were informed that a written guarantee would be required from the representative of the power for whom the vessels might be purchased, that they would not be used for warlike purposes against any power with whom the Queen was at peace, and that the government reserved to itself the right of refusing, without giving any reason, to sell the vessels when the name of the principal in the transaction should be disclosed. The negotiation was dropped. Overtures were also made in 1865 by Messrs. Bake & Co. to buy the vessels for the government of Mexico, but these also failed.

A committee appointed to assess the value of the vessels at the time they left China valued them, with the concurrence of Captain Osborn, at £152,500, and Mr. Wade was instructed to inform the Chinese government that the admiralty would be intrusted with the sale of them, that the amount realized would be transmitted to the Chinese government, and any loss upon the original value of the ships would be made good by Her Majesty's government. The admiralty was at the same time again cautioned against the sale of the vessels either directly or indirectly to any state or body of persons at war with a state in amity with Her Majesty.[3]

In June, 1865, the civil war in America having come to an end, the restrictions on the sale of the vessels were withdrawn; but, from the delay and consequent deterioration, the price realized fell far short of the original estimate.

The government of Egypt purchased the three vessels in England for £30,100. Of the four vessels left at Bombay, the government of India purchased two for £14,500, from which, however, a sum of £6,376 had to be deducted for dock-yard expenses. A sum of £11,250 was realized by the sale of the two remaining vessels; and the balance of £103,026 was provided by a parliamentary grant, and paid over to the Chinese government.[4]

The guns and munitions of war on board the vessels had been procured from Her Majesty's government, and they were taken back by the

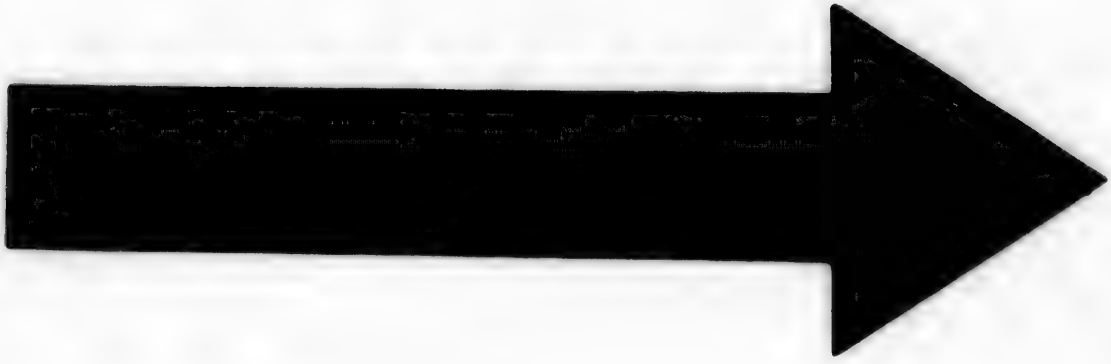
[1] Appendix, vol. ii, p. 704.
[2] Ibid., p. 710.
[3] Ibid., pp. 712–714.
[4] Ibid., p. 721.

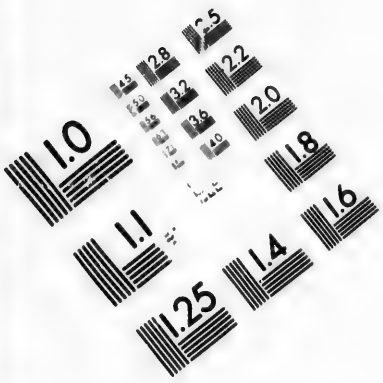
military authorities in England and India, and the amount remitted to the Chinese government.

Sir Frederick Bruce, writing in December, 1865, from Washington, to urge a speedy settlement of the Chinese claim, said, "I may
[30] mention that there is no doubt that agents *of the confederates were on the look-out to purchase the more powerful vessels of the squadron from the Chinese, had they been left in their hands, and it is equally certain that the Chinese would have sold these vessels as being unsuited to them. It is not difficult to conjecture what would have been the effect on our relations with this government had any of these vessels been turned into confederate cruisers. It would have been impossible to disabuse this government and people of the idea that the flotilla was a deep-laid scheme to supply the confederates with an efficient squadron in the Pacific.[1]

And Mr. Adams, in a note to Lord Clarendon of December 28, 1865, on the same subject, wrote as follows:[2] "In a conversation which I had the honor to hold with your predecessor, the Right Honorable Earl Russell, on the 25th of February, 1864, I acquitted myself of what was to me a most agreeable duty, of signifying to Her Majesty's government the high sense entertained by that which I have the honor to represent of the friendly proceedings of Her Majesty's envoy in China, Sir Frederick Bruce, in regard to the disposition to be made of the vessels then known as the Osborn Flotilla."

[1] Appendix, vol. ii, p. 718. [2] Ibid., p. 719.





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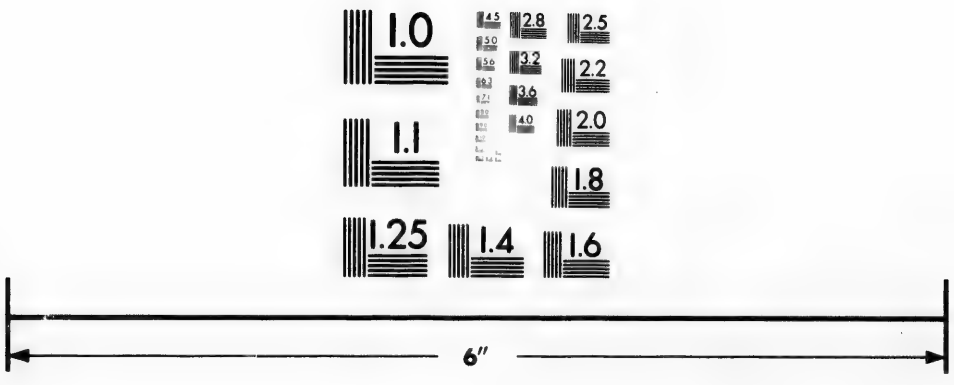

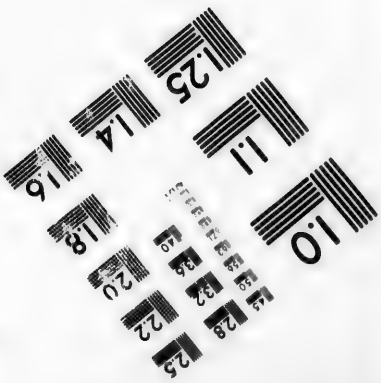

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*PART IV.

CONSIDERATIONS PROPER TO BE KEPT IN VIEW BY THE ARBITRATORS IN REFERENCE TO THE CASES OF THE FLORIDA, ALABAMA, GEORGIA, AND SHENANDOAH.

PART IV.—Introductory statement.

In considering the facts about to be presented to the tribunal relative to the four vessels which, after having been originally procured from British ports, were employed as confederate cruisers in the war, it is right that the arbitrators should bear in mind the following propositions, to some of which their attention has already been directed in an earlier part of this case:

1. The powers possessed by Her Majesty's government to prohibit or prevent the fitting out, arming, or equipping within its jurisdiction of vessels intended for the naval service of the Confederate States, or the departure with that intent of vessels specially adapted within its jurisdiction to warlike use, were powers defined and regulated by the statute or act of Parliament of July 3, 1819, (the foreign-enlistment act.)

2. The modes of prevention provided by the statute were two, of which both or either might be adopted as might be deemed most expedient, namely, (1,) the prosecution of the offender by information or indictment; (2,) the seizure of the ship, which, after seizure, might be prosecuted and condemned in the same manner as for a breach of the customs or excise laws or of the laws of trade and navigation.

3. The persons empowered to seize under the provisions of the statute were any officers of customs or excise or of Her Majesty's navy, who by law were empowered to make seizures for forfeitures incurred under the laws of customs or excise, or of trade or navigation; and the seizure was to be made in the same manner as seizures are made under those laws.

4. The customs officers were not empowered by law to make a seizure until an information on oath should have been laid before them. Nor, without such an information on oath, had any magistrate jurisdiction under the provisions of the statute.

5. After a seizure made, it was by law necessary that proceedings for the condemnation of the vessel seized should be instituted in the court of exchequer and brought to trial before a jury. In order to obtain a condemnation it was necessary to prove two things:

(*a.*) That there had been in fact an equipping, furnishing, fitting-out, or arming of the vessel, or an attempt or endeavor so to do, or an issuing or delivery of a commission for the vessel, within the dominions of the Crown;

(*b.*) That the act had been done with intent, or in order, that the vessel should be employed in belligerent operations as described in the seventh section of the statute.

6. By proof, in a British court of law, is understood the production

of evidence sufficient to create in the mind of the judge or jury (as the case may be) a reasonable and deliberate belief, such as a reasonable person would be satisfied to act upon in any important concerns of his own, of the truth of the fact to be proved. And by evidence is understood the testimony, on oath, of a witness or witnesses produced in open court, and subject to cross-examination, as to facts within his or their personal knowledge. Testimony which is mere hearsay, or as to the existence of common reports, however prevalent and however generally credited, or as to any matter not within the knowledge of the witness, is not admitted in an English court.

7. In the judgment of Her Britannic Majesty's government, and in that of its official advisers, the special adaptation of a vessel to warlike use was among the acts prohibited by the statute, provided there were sufficient proof of an unlawful intent, although the vessel might not be actually armed so as to be capable of immediate employment for war. But no court of law had pronounced a decision on this point, and the question was never raised before any such court until the trial of the case of the Alexandra in 1863.

Her Britannic Majesty's government now proceeds to state for the information of the tribunal the facts relative to the cases of the
[52] Florida and Alabama. It may be here *remarked that when these cases were brought to the notice of Her Majesty's government, and up to the time of the departure of the Alabama from Liverpool, there had been no instance from the commencement of the war of a vessel ascertained to have been fitted out in, or dispatched from, any British port for the purpose of engaging in hostilities against the United States. The only vessel to which the attention of Her Majesty's government had been directed before the Florida had proved to be a blockade-runner.

It may be added that the claims for the interference of Her Majesty's government in the case of these and other vessels were based, according to the statement of Mr. Adams in his letter to Earl Russell, dated October 9, 1862, on evidence considered by him to "apply directly to infringements of the municipal law, and not to anything beyond it."[1]

[1] Appendix, vol. i, p. 216.

[53]

*PART V.

STATEMENT OF FACTS RELATIVE TO THE FLORIDA.

PART V.—The Florida.

On the 19th February, 1862, Earl Russell received from Mr. Adams the following note and inclosure:

Mr. Adams to Earl Russell.[1]

LEGATION OF THE UNITED STATES,
London, February 18, 1862.

MY LORD: I have the honor to submit to your consideration the copy of an extract of a letter addressed to me by the consul of the United States at Liverpool, going to show the preparation at that port of an armed steamer evidently intended for hostile operations on the ocean. From the evidence furnished in the names of the persons stated to be concerned in her construction and outfit, I entertain little doubt that the intention is precisely that indicated in the letter of the consul, the carrying on war against the United States. The parties are the same which dispatched the Bermuda, laden with contraband of war at the time, in August last, when I had the honor of calling your lordship's attention to her position, which vessel then succeeded in running the blockade, and which now appears to be about again to depart on a like errand.

Should further evidence to sustain the allegations respecting the Oreto be held necessary to effect the object of securing the interposition of Her Majesty's government, I will make an effort to procure it in a more formal manner.

I have, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure.]

Mr. Dudley to Mr. Adams.

UNITED STATES CONSULATE.
Liverpool, February 17, 1862.

SIR: The gun-boat Oreto is still at this port. She is making a trial trip in the river to-day. No armament as yet on board. She has put up a second smoke stack since I wrote you. She therefore has two funnels, three masts, and is bark-rigged. I am now informed that she is to carry eight rifled cannon, and two long swivel-guns on pivots so arranged to rake both fore and aft. No pains or expense has been spared in her construction, and when fully armed she will be a formidable and dangerous craft. In strength and armament quite equal to the Tuscarora; so I should judge from what I learn.

Mr. Miller, who built the hull, says he was employed by Fawcett, Preston & Co., and that they own the vessel. I have obtained information from many different sources, all of which goes to show that she is intended for the southern confederacy. I am satisfied that this is the case. She is ready to take her arms on board. I cannot learn whether they are to be shipped here or at some other port. Of course she is intended as a privateer. When she sails, it will be to burn and destroy whatever she meets with bearing the American flag.

The Herald sailed for Charleston on Saturday last; Captain Coxeter went out in her. The Bermuda will sail this week.

I have, &c.,
(Signed) H. DUDLEY,
United States Consul.

[1] Appendix, vol. i, p. 1.

P. S.—The gun-carriages for the Oreto, I have just learned, were taken on board on Friday night last, in a rough state, and taken down into the hold. Fraser, Trenholm & Co. have made advances to Fawcett, Preston & Co., and Miller, the builder.

H. D.

A fortnight before the date of Mr. Adams's letter, Mr. Dudley, in writing to Mr. Seward, had mentioned the Oreto. He then said, "In my last two dispatches I called attention to the iron-screw steam gunboat Oreto or Oretis, being built at Liverpool, and fitted out by Fawcett, Preston & Co. She is now taking in her coal, and appearances indicate that she will leave here the latter part of this week without her armament. The probabilities are she will run into some small port and take it and ammunition on board. This of itself is somewhat suspicious. They pretend she is built for the Italian government, but the Italian consul here informs me that he knows nothing about it, and has no knowledge whatever of any vessel being built for his government. There is much secrecy observed about her, and I have been unable to get anything definite, but my impressions are strong that she is intended for the southern confederacy. I have communicated my impressions and all the facts to Mr. Adams, our minister in London. She has
[54] one funnel, *three masts, bark-rigged, eight port-holes for guns on each side, and is to carry sixteen guns."

Mr. Adams had not, previously to his note of the 18th, made any communication respecting this vessel to Her Majesty's government.

Immediately on the receipt of Mr. Adams's note and inclosure, copies of both were sent to the secretary to the treasury, accompanied by the following letter signed by Mr. Hammond, one of the under secretaries of state for foreign affairs:[1]

FOREIGN OFFICE, *February* 19, 1862.

SIR: I am directed by Earl Russell to transmit to you a copy of a letter from Mr. Adams, inclosing an extract of a letter from the United States consul at Liverpool, in which he calls attention to a steam-vessel called the Oreto, reported to be fitting out at Liverpool as a southern privateer; and I am to request that you will move the lords commissioners of Her Majesty's treasury to cause immediate inquiries to be made respecting this vessel, and to take such steps in the matter as may be right and proper.

I am, &c.,
(Signed) E. HAMMOND.

Earl Russell on the same day acknowledged the receipt of Mr. Adams's note and inclosure, and stated (as the fact was) that he had lost no time in communicating with the proper department of government on the subject.

The commissioners of customs were instructed to inquire and report upon the matter; and on the 24th of February, 1862, the secretary to the treasury transmitted to Mr. Hammond their report, which was as follows:[2]

CUSTOM-HOUSE, *February* 22, 1862.

Your lordships having referred to us the annexed letter from Mr. Hammond, transmitting, by desire of Earl Russell, copy of a letter from Mr. Adams, inclosing an extract of a communication from the United States consul at Liverpool, in which he calls attention to a steam-vessel called the Oreto, reported to be fitting out at Liverpool as a southern privateer, and requesting that immediate inquiries may be made respecting this vessel,

We report—

That, on the receipt of your lordships' reference, we forthwith instructed our collector at Liverpool to make inquiries in regard to the vessel Oreto, and it appears from his report that she has been built by Messrs. Miller & Sons for Messrs. Fawcett, Preston & Co., engineers, of Liverpool, and is intended for the use of Messrs. Thomas Brothers, of Palermo, one of that firm having frequently visited the vessel during the process of building.

[1] Appendix, vol. i, p. 2. [2] Ibid., p. 2.

The Oreto is pierced for four guns; but she has as yet taken nothing on board but coals and ballast. She is not, at present, fitted for the reception of guns, nor are the builders aware that she is to be supplied with guns while she remains in this country. The expense of her construction has been paid, and she has been handed over to Messrs. Fawcett & Preston. Messrs. Miller & Sons state their belief that her destination is Palermo, as they have been requested to recommend a master to take her to that port, and our collector at Liverpool states that he has every reason to believe that the vessel is for the Italian government.

We beg further to add that special directions have been given to the officers at Liverpool to watch the movements of the vessel, and that we will not fail to report forthwith any circumstances which may occur worthy of your lordships' cognizance.

(Signed)

THO. F. FREMANTLE.
GRENVILLE C. L. BERKELEY.

The reports which the commissioners of customs had received from their officers at Liverpool were as follows:[1]

Mr. Edwards to the commissioners of customs.

LIVERPOOL, *February* 21, 1862.

HONORABLE SIRS: The builders of the vessel Oreto are Messrs. Miller & Sons. Mr. Miller is the chief surveyor of tonnage. By their note inclosed the vessel is correctly described, and I have every reason to believe that she is for the Italian government, and not for the confederates.

It will be seen by the note of the surveyor, Mr. Morgan, which I annex, that as yet she has nothing in her, so that the information furnished to the government is, so far, incorrect.

Special directions have been given to the officers to observe the movements of the vessel, so that whatever takes place can be made known to the board at any time.

Respectfully, &c.,
(Signed)

S. PRICE EDWARDS.

Mr. Miller to Mr. Edwards.

LIVERPOOL, *February* 21, 1862.

SIR: We have built the dispatch-vessel Oreto for Messrs. Fawcett, Preston & Co., engineers, of this town, who are the agents of Messrs. Thomas Brothers, of Palermo, for whose use the vessel, we understand, has been built. She is pierced for four guns; she has taken nothing whatever on board except coals and ballast; she is in no [55] way fitted for the reception of guns, as yet; nor do we know * that she is to have guns while in England. Mr. Thomas, of the firm at Palermo, frequently visited the ship while she was being built.

We have handed her over to the engineers, and have been paid for her. According to the best of my information the present destination of the vessel is Palermo; and we have been asked to recommend a master to take her out to Palermo.

I remain, &c.,
(Signed)

T. MILLER.

Mr. Morgan to Mr. Edwards.

FEBRUARY 21, 1862.

SIR: I beg to state that I have inspected the Oreto, now lying in Toxteth Dock agreeably with your directions issued to-day.

She is a splendid steamer, suitable for a dispatch-boat; pierced for guns, but has not any on board, nor are there any gun-carriages. Coals and ballast are all that the holds contain.

Respectfully, &c.,
(Signed)

C. MORGAN, *Collector.*

A copy of the report of the commissioners of customs was sent on the 26th February by Earl Russell to Mr. Adams.

Her Britannic Majesty's minister at Turin was directed to inquire whether the vessel was intended for the use of the Italian government; and, on the 1st March, 1862, he telegraphed as follows: "Ricasoli tells me that he has no knowledge whatever of the ship Oreto, but will cause inquiry to be made."[2]

[1] Appendix, vol. i, p. 159.

[2] Ibid., p. 3.

Up to this time no information whatever tending to prove that the vessel was intended for belligerent use had been obtained by Mr. Adams or was possessed by Her Majesty's government. She had been built for a Liverpool firm of engineers and iron-founders, and was stated by the builders to be for the use of a firm at Palermo, a member of which (himself a native of Palermo) was known to have often visited her while building. She was prepared for guns, but not fitted for the reception of them, and had none on board. Beyond this Mr. Adams's note and Mr. Dudley's letter contained only vague hearsay and conjecture.

No further information could be obtained by Mr. Adams, or was received by Her Majesty's government, up to the time of the sailing of the ship.

On the 3d March, 1862, the Oreto was registered at the port of Liverpool, in the name of "John Henry Thomas, of Liverpool, in the county of Lancaster, merchant," as sole owner thereof. The declaration made by the said John Henry Thomas at the time of registry was as follows:[1]

Official number of ship, 44,200; *date of registry, March* 3, 1862.

General description of ship.		Port of registry.	How propelled.
Name of ship.	British or foreign built.		
Oreto	British built at Liverpool in 1861.	Liverpool.	Screw.

Number of decks	Two.	Build	Carvel.
Number of masts	Three.	Galleries	None.
Rigged	Schooner.	Head	Shield.
Stern	Elliptic.	Frame-work	Wood.

MEASUREMENTS.

	Feet.	Tenths.
Length from the fore part of stem, under the bowsprit, to the aft side of the head of the stern-post	185	2
Main breadth to outside plank	28	3
Depth in hold from tonnage-deck to ceiling at midships	13	7

TONNAGE.

	No. of tons.
Tonnage under tonnage-deck	410. 41
Closed-in spaces above the tonnage-deck, if any, viz:	
Space or spaces between decks	
Poop	
Round-house	
Other inclosed spaces, if any, naming them	
Gross tonnage	410. 41
Reduction for space required for propelling power	231. 90
Registered tonnage	178. 51

Length of engine-room	61 feet.
Number of engines	2
Combined power, (estimated horse-power,) number of horse-power	200

[56] "I, the undersigned, John Henry Thomas, of Liverpool, county of Lancaster, merchant, declare as follows: I am a natural-born British subject, born at Palermo, in the island of Sicily, of British parents, and have never taken the oath of allegiance to any foreign state. The above general description of the ship is correct. James Alexander Duguid, whose certificate of competency or service is No. 4073 is the master of said ship. I am entitled to be registered as owner of sixty-four shares of the said ship. To the best of my knowledge and belief no person or body of persons other than

[1] Appendix, vol. i, p. 10.

such persons or bodies of persons as are by the merchant-shipping act, 1854, qualified to be owners of British ships is entitled, as owner, to any interest whatever, either legal or beneficial, in the said ship. And I make this solemn declaration conscientiously, believing the same to be true.

(Signed) JOHN H. THOMAS.

Made and subscribed the 1st day of March, 1862, by the above-named John Henry Thomas, in the presence of

(Signed) J. C. JOHNSTONE, JR.,
Registrar of Shipping, Port of Liverpool.

On the 4th March, 1862, the Oreto was cleared from the office of customs, Liverpool, for Palermo and Jamaica, as appears from her victualing-bill, of which the following is a copy:[1]

Victualing-bill.

Pilot, ——— ———. Granted number, [662.]

PORT OF LIVERPOOL.—ORETO.

Bonded and drawback stores in the ———. James A. Duguid, master, for Palermo and Jamaica. Men, 52; passengers or troops, ——; guns, ——; 178 tons.

		Net quantities taken on board.
Spirits, foreign:		
Rum	per gallon	2 cases; 54 gallons.
Brandy	do	10 cases; 20 gallons.
Geneva	do	
Other spirits, not sweetened	do	
Spirits, British or plantation:		
Rum	do	
Gin	do	8 cases; 16 gallons.
Whisky	do	
Other spirits, not sweetened	do	12 cases; $23\frac{3}{4}$ gallons.
Wine	do	20 cases; 40 gallons.
Wine, (for drawback)	do	
Beer, (for drawback)	do	
Vinegar	do	
Tea	per pound	3 chests, 5 canisters; 240 lbs.
Coffee	do	4 bags; 646 lbs.
Coffee, roasted, (for drawback)	do	
Cocoa	do	
Cocoa-paste	do	
Sugar, refined	per hundred-weight	1 barrel; 1 cwt. 8 lbs.
Sugar, (for drawback)	do	5 bags, 3 barrels } 13 cwt. 2 qrs. 12 lbs.
Sugar, unrefined	do	
Sugar, unrefined, (for drawback)	do	
Sugar, bastard, (for drawback)	do	
Molasses	do	
Tobacco, (for drawback)	per pound	3 boxes; 63 lbs.
Tobacco, negro-head	do	
Tobacco, roll	do	2 boxes; 10 lbs.
Sugars	do	
Pepper	do	12 boxes; 2 cwt. 1 qr. 26 lbs.
Raisins	per hundred-weight	11 jars; 2 cwt. 1 qr. 18 lbs.
Currants	do	
Figs	do	
Prunes	do	
Plums	do	
Sundries	do	
Surplus stores	do	

(Signed) J. MUDIE, *Searcher.*
———— ———, 1862. ———— ———, *Collector.*
SAMUEL WAKEHAM, *Broker*, 17 *Park Lane.*

Examined.
Cleared March 4.

[1] Appendix, vol. i, p. 8.

The above victualing bill is in the usual form, printed with blanks to be filled up according to the facts in each case. The blanks
[57] following the words "passengers or *troops" and the word "guns," respectively, are equivalent to a statement that the vessel had on board no passengers or troops and no guns. The words "178 tons" denote the registered tonnage of the ship.

It may be convenient here to explain briefly what is meant by the words "registry" and "clearance," and what are the duties of the officers empowered to register ships and of the officers of the customs in respect to granting clearances.

Registry signifies the recording, in a book kept for that purpose, of the name of a ship which the owner desires to have recognized as a British ship, together with certain particulars composing a general description of the ship.

The effect of registry is to entitle the ship to use the British flag and assume the British national character. The conditions necessary for obtaining a registry, in the case of a ship not already registered, are the production to the registrar of a certificate by the builder, in a form prescribed by law, and of a declaration (also in a prescribed form) that the ship is British-owned.

It is not the duty of the registrar to question or ascertain the accuracy of either the builder's certificate or the declaration of ownership. As a ministerial officer, he is bound to accept them, if tendered to him. For false statements in the certificate the builder is liable to a penalty; and for making a willfully false declaration, the owner is liable to be indicted for a misdemeanor and to forfeit his interest in the ship.

In Great Britain, as in the United States, the law does not positively require the registration of any vessel. But the disadvantages and disabilities incurred by omitting to procure it are practically sufficient to make the registration of British-owned ships universal.

The register, though, in ordinary questions arising under municipal law, evidence of the title of the person registered as owner, is not conclusive in a question arising between other parties, nor is it necessarily sufficient proof of the national character of the ship. A transfer to a foreigner, at sea or beyond seas, of a registered British ship is sufficient to change its ownership and the nationality of the vessel, though not followed by any registry. The law of registry is a part of the law by which British trade and navigation are regulated for fiscal and other purposes; and a ship is registered as British on the voluntary declaration of the person claiming to be owner, without further proof.

The number of vessels which were placed on the registers of the various ports of the United Kingdom in the year 1870 was 1,043, of which 970 were built within the United Kingdom.

Clearance signifies the final official act by which the proper officer of customs notifies that all has been done which the law requires to be done before the departure of ship and cargo. It is purely for customs purposes, the main objects being to protect the revenue and to secure statistics as to the number of ships and quantity of merchandise entering and leaving British ports. As there are in ordinary times no restrictions or duties on the export of articles of any kind from the United Kingdom, no rigid inspection is exercised by the customs authorities over the general nature of the goods shipped on board vessels in British ports. The attention of the authorities is mainly directed to the shipment of those articles on which an exemption from import duties otherwise payable, or a remission of import duties already paid, is claimed on the ground

of their exportation abroad. The object of the inspection is to ascertain that the goods of this nature stated to be thus exported are really shipped and carried away on board the vessel. The agents who ship such goods furnish the customs department with statements, in the form of shipping-bills, of the amount and nature thereof, and it is the duty of the examining officer to ascertain that the packages placed on board the vessel correspond with these statements. Before starting on his voyage the master of the vessel is bound to produce a paper called a content, giving the number and description of any packages of merchandise shipped on board on which exemption from or remission of duty is claimed, but merely specifying any other articles as "sundry packages of free goods.' The master has also to produce a victualing-bill, enumerating the amount of stores liable to duty (such as tea, spirits, tobacco, and the like) which he has shipped for the use of his crew. These papers are compared with the shipping-bills and certificates already in the possession of the customs authorities, and if they are found to tally, a label, signed and sealed by the examining officer and collector, is affixed to the victualing-bill and certificates, and these papers are delivered to the master as his clearance.

It is true that, for statistical purposes, the agents to the master of the vessel are required to furnish to the customs department a list, called a manifest, giving the number and description of all packages of goods, whether liable to duty or not, shipped on board the vessel, and the shipping agents or exporters are also required to furnish specifications of all goods, described by the master on his content as "sundry packages of free goods," and subsequently further described in his manifest; but
[58] the law does not require that these *particulars should be given before the vessel sails; it is complied with provided they be furnished within six days after she has cleared.

Previously to the year 1867, no penalty was attached by law to the departure of a vessel for foreign ports without a clearance, provided she was in ballast and had on board no stores except such as were free or had paid duty. Since that date, however, clearance has been required in these as well as in other cases.

A clearance may not be granted until the master of the ship has declared the nation to which he affirms that she belongs; and a ship attempting to proceed to sea without a clearance may be detained until such a declaration has been made. The officer, however, cannot question, or require proof of, the truth of the declaration. As to the destination of ships sailing from the United Kingdom, the officers of customs have little or no means of ascertaining this beyond the information which the master or owner gives on entering outward. It frequently happens that a vessel entered outward for a specified destination changes her course when at sea and proceeds to a different destination. There are no means of preventing this.

The number of vessels clearing from ports of the United Kingdom in the course of the year is very great. In the year 1870 the number of clearances granted was 203,031. Of these 13,214 were for vessels sailing from Liverpool and 17,037 for vessels sailing from London.

On the 22d of March, 1862,[1] the Oreto sailed from Liverpool. Her master was James Alexander Duguid, a master-mariner residing at Liverpool, and the person named in the above declaration. Her crew were hired, as appears from the articles signed by them, for a voyage from Liverpool to Palermo, and thence, if required, to a port or ports in the Mediterranean Sea or the West Indies, and back to a final port of discharge

[1] Appendix, vol. i, p. 161.

in the United Kingdom, the term not to exceed six months. They were not enlisted in the service of the Confederate States; and it is clear, from what subsequently occurred at Nassau, that they had no intention whatever of entering that service, and had at the time of sailing no knowledge or suspicion that the vessel was intended to be employed as a confederate ship of war.

The subjoined statements, made in the month of August, 1862, for the information of the commissioners of customs and of Her Majesty's government, by officers of the customs at Liverpool, and by the pilot who took the Oreto out of the Mersey, further show what was the condition of the vessel at the time of her departure, and the precautions taken in respect of her:[1]

Statement of Mr. Edward Morgan.

I am one of the surveyors of customs at this port: pursuant to instructions I received from the collector on the 21st of February in the present year and at subsequent dates, I visited the steamer Oreto at various times, when she was being fitted out in the dock, close to the yard of Messrs. Miller & Sons, the builders of the vessel. I continued this inspection from time to time until she left the dock, and I am certain that when she left the river she had no warlike stores of any kind whatever on board.

After she went into the river she was constantly watched by the boarding officers, who were directed to report to me whenever any goods were taken on board, but, in reply to my frequent inquiries, they stated nothing was put in the ship but coals.

(Signed) EDWARD MORGAN, *Surveyor.*

Statement of Mr. Henry Lloyd.

In consequence of instructions received from Mr. Morgan, surveyor, I, in conjunction with the other three surveyors of the river, kept watch on the proceedings of the vessel Oreto from the time she left the Toxteth Dock, on the 4th March last, till the day she sailed, the 22d of the same month. On one occasion I was alongside of her, and spoke to Mr. Parry, the pilot, and the chief mate. Neither I nor any of the other river surveyors saw at any time any arms or warlike ammunition of any kind taken on board, and we are perfectly satisfied that none such was taken on board during her stay in the river.

(Signed) H. LLOYD, *Examining Officer.*

Statement on oath of Mr. William Parry.

I was the pilot in charge of the ship Oreto when she left the Toxteth Dock on the 4th March, 1862. I continued on board to the day of her sailing, which was the 22d of the same month, and never left her save on Sunday, when all work was suspended.

I saw the ship before the coals and provisions were taken into her; there were
[59] no munitions of war in her—that is to say, she had no guns, *carriages, shot, shell, or powder; had there been any on board I must have seen it. I piloted the ship out of the Mersey to Point Lynas, off Anglesea, where I left her, and she proceeded down the channel, since which she has not returned. From the time the vessel left the river until I left her she held no communication with the shore, or with any other vessel, for the purpose of receiving anything like cargo on board. I frequently saw Mr. Lloyd, the tide surveyor, alongside the ship while in the river.

(Signed) WM. PARRY.

Sworn before me, at the custom-house, Liverpool, this 23d August, 1862.

(Signed) S. PRICE EDWARDS, *Collector.*

On the 26th March, 1862, Earl Russell received from Mr. Adams a note[2] dated the previous day, which contained the following passage:

It is with great reluctance that I am drawn to the conviction that the representations made to your lordship of the purposes and destination of that vesel were delusive; and that, though at first it may have been intended for service in Sicily, yet that such an intention has long been abandoned, in fact, and that the pretense has been held up only the better to conceal the true object of the parties engaged. That object is to make war against the United States. All the persons thus far known to

[1] Appendix, vol. i, p. 34.

[2] Ibid., p. 4.

be most connected with the undertaking are either directly employed by the insurgents of the United States of America or residents of Great Britain, notoriously in sympathy with and giving aid and comfort to them on this side of the water.

Mr. Adams proceeded to enlarge on the dissatisfaction felt in the United States at the circumstance that the trade with blockaded ports was (as he alleged) chiefly carried on from Great Britain and her dependencies, and that this was permitted or not prevented by Her Majesty's government. He added:

The duty of nations in amity with each other would seem to be plain not to suffer their good faith to be violated by ill-disposed persons within their borders, merely from the inefficacy of their prohibitory policy. Such is the view which my government has been disposed to take of its own obligations in similar cases, and such it doubts not is that of all foreign nations with which it is at peace. It is for that reason I deprecate the inference that may be drawn from the issue of the investigation which your lordship caused to be made in the case of the Oreto, should that vessel be ultimately found issuing safely from this kingdom, and preying on the commerce of the people of the United States. Not doubting myself the sincerity and earnest desire of your lordship to do all that is within your power to fulfill every requirement of international amity, it is to be feared that all the favorable effect of it may be neutralized by the later evidence of adverse results. It is no part of my intention to imply the want of fidelity or of good-will in any quarter. I desire to confine myself closely within the pale of my duty, a representation of the precise causes of uneasiness between the two countries, and an earnest desire to remove them. Firmly convinced that the actual position of things in connection with the hostile equipment in British waters by no means does justice to the true disposition of Her Majesty's government, I am anxious to place the matter before your lordship in such a light as to obtain the evidence more perfectly to establish the truth.

In the above note Mr. Adams inclosed a copy of a letter received from Mr. Dudley, which was as follows:

Mr. Dudley to Mr. Adams

UNITED STATES CONSULATE, *Liverpool, March* 22, 1862.

SIR: The Oreto is still in the river. A flat-boat has taken part of her armament to her. A part of the crew of the steamer Annie Childs, which came to this port loaded with cotton, have just left my office. They tell me that Captain Bullock is to command the Oreto, and that four other officers for this vessel came over with them in the Childs. The names of three are Young, Low, and Maffit or Moffit; the fourth was called Eddy; the two first are lieutenants, and the two last-named midshipmen. They further state that these officers during the voyage wore naval uniforms; that they came on the Childs at a place called Smithville, some twenty miles down the river from Wilmington; that it was talked about and understood by all on board that their object in coming was to take command of this vessel, which was being built in England for the southern confederacy. They further state that it was understood in Wilmington, before they left, that several war vessels were being built in England for the South. As they were coming up the river in the Childs, as they passed the Oreto she dipped her flag to the Childs. I have had this last from several sources, and the additional fact that the same evening after the arrival of this steamer a dinner was given in the Oreto to the officers who came over in the Childs. I understand she will make direct for Madeira and Nassau.

I have, &c.,
(Signed) THOMAS H. DUDLEY.

[60] *The above note was dated on the third day, and received (with its inclosure) on the fourth day, after the Oreto had put to sea.

In answer to the above note, Earl Russell, on the 27th March, 1862, wrote to Mr. Adams as follows:

Earl Russell to Mr. Adams.[1]

FOREIGN OFFICE, *March* 27, 1862.

Sir: Upon receiving your letter of the 25th instant, I immediately directed that the treasury and customs department should be requested to take such steps as may be necessary to ascertain whether the Oreto is equipped for the purpose of making war on the United States, and, if that fact can be proved, to detain the vessel.

[1] Appendix, vol. i, p. 6.

The charge that nearly all the assistance now obtained from abroad by the persons still in arms against the Government of the United States, and which enables them to continue the struggle, comes from Great Britain and its dependencies, is somewhat vague. I believe the greater part of the arms and ammunition sent from this country to America during the struggle has gone to the United States.

I agree with you in the statement that the duty of nations in amity with each other is not to suffer their good faith to be violated by ill-disposed persons within their borders, merely from the inefficacy of their prohibitory policy. But it is, at the same time, a duty not to punish persons on suspicion without any proof of their evil intent. It is not the custom of this country to deprive any person of liberty or property without evidence of some offense. If such evidence can be obtained, the laws are sufficient to prevent the accomplishment of their evil designs against friendly nations.

You have not yourself hitherto furnished me with evidence that any vessel has received a hostile or warlike equipment in British waters, which has been afterward used against the United States. The care that was taken to prevent the warlike equipment of the Nashville in British waters must be familiar to your recollection.

With regard to co-operation with the policy of the United States in respect to the blockade, I must remind you that Great Britain has abstained, as far as possible, from complaints of the irregularity of the blockade which has been instituted. Her Majesty's government have been mindful of the suddenness of the danger with which the United States were threatened; of the inadequacy of the naval force then at the disposal of the government; and of the great difficulty of blockading a coast of 3,000 miles.

But beyond forbearance, and a liberal interpretation of the law of nations in favor of the United States, Her Majesty's government cannot go. If by co-operation with the policy of the United States is meant, either taking part in the civil war still raging, or imposing restraints on the Queen's subjects unknown to international law, I cannot undertake that Her Majesty's government will adopt either of those courses. It would be an unheard of measure to prohibit merchants from sending ships to sea destined to the southern ports. Should such ships attempt to violate the blockade, capture and condemnation are the proper penalty of such attempts; no authority can be found for any other.

But while these attempts are made on the one side, the United States Government have willingly received in the ranks of their army British subjects, who violate the Queen's proclamation in order to serve against the confederates. Nay, the law of the United States, by which parents can prevent the enlistment of their sons, being minors, has been set aside to the prejudice of British subjects, the fathers and mothers of thoughtless lads of sixteen or seventeen years of age.

These evils are, perhaps, inseparable from the unhappy contest now carried on in America. I can only trust it may have a speedy termination, suitable to the reputation of the United States, and conducive to the future happiness of all the inhabitants of a country so lately prosperous and united.

I am, &c.,
(Signed) RUSSELL.

Information that the Oreto had put to sea had not at this time been received by Her Majesty's government.

On the 8th April, 1862, Earl Russell sent to Mr. Adams the following report of inquiries made respecting the Oreto by order of the commissioners of customs:[1]

CUSTOM-HOUSE, *April* 4, 1862.

Your lordships having referred to us the annexed letter from Mr. Hammond, transmitting, by desire of Earl Russell, a copy of a further letter, addressed by the United States consul at Liverpool to Mr. Adams, the United States minister at this court, in which it is again affirmed that the Oreto is being fitted out as a vessel of war for the southern confederacy, and various statements are reported in support of that assertion, and requesting that your lordships would instruct this board to give directions that the Oreto might be vigilantly watched, and that, if any armament prohibited by the foreign-enlistment act should be discovered, the vessel might be at once detained.

We report—

That, on the receipt of your lordship's reference, we directed our collector at Liverpool immediately to inquire into the further allegations made in regard to the Oreto, and to govern himself in accordance with the instructions contained in Mr. Hammond's letter, and, having received the report of the collector, we find that the vessel in question was registered on the 3d ultimo, in the name of John Henry Thomas, of Liverpool, as sole owner; that she cleared on the following day for Palermo

[1] Appendix, vol. i, p. 7.

[61] and *Jamaica in ballast, but did not sail until the 22d, the day on which the American consul's letter is dated, having a crew of fifty-two men, all British, with the exception of three or four, one of whom only was an American. She had no gunpowder, nor even a signal-gun, and no colors, saving Marryatt's code of signals and a British ensign, nor any goods on board except the stores enumerated on the accompanying copy of her victualing-bill.

With regard to the statements in the letter of the consul, the collector further reports that it is clear the passengers brought by the Annie Childs, the vessel therein mentioned, which has recently arrived from one of the Southern States, were not intended to form any portion of the crew of the Oreto, inasmuch as they were still in Liverpool, and that the dipping of the ensign on board the latter vessel on the arrival of the Annie Childs, as far as the collector had been enabled to ascertain, was intended as a compliment to one of the Cunard steamers and another vessel which saluted the Annie Childs on her arrival, the masters of the several vessels being known to one another.

(Signed) THO. F. FREMANTLE.
GRENVILLE C. L. BERKELEY.

This report was accompanied by a copy of the ship's victualing-bill.

On the 28th April, 1862, the Oreto arrived at Nassau, as appears by the subjoined entry in the books of the revenue department of the colony of the Bahamas:[1]

Inwards.

(No. 48.)

In the British steamer Oreto, Duguid, master, from Liverpool; 178 tons; 12 feet; 52 men.

Ballast.

NASSAU, *New Providence, April* 28, 1862.

On the 29th April she quitted the part of the harbor which is adjacent to the town of Nassau, and proceeded to Cochrane's Anchorage, a station distant from the town about fifteen miles, measuring by the course usually taken by vessels of heavy draught. It was stated that this was done on the advice of the pilot, and for the reason that there was not room for her in the harbor. On the 9th May, 1862, the governor of the Bahamas received from Mr. Whiting, United States consul at Nassau, the following letter:[2]

UNITED STATES CONSULATE,
Nassau, New Providence, May 9, 1862.

SIR: I have the honor to communicate to your excellency several facts of importance, deeming it to be my duty so to do, as representative of the Government of the United States of America.

The tug Fanny Lewis, which arrived here from Liverpool on the 6th instant, has on board, I am credibly informed by letters received from that port, a large quantity of powder for the rebel States of America, or for the so-called Confederate States.

On the 28th ultimo the steamer Oreto also arrived off this port from Liverpool, and now lies at Cochrane's Anchorage, where it is believed, and so reported by many residents here, that she is being prepared and fitted out as a confederate privateer to prey on the commerce of the United States of America.

I inclose for your excellency's perusal a slip from the Wilmington, North Carolina, paper of the 20th April.

I cannot but think that your excellency will consider it proper that some inquiry should be made to ascertain how far the vessels alluded to are preserving the strict neutrality so earnestly enjoined by Her Majesty's late proclamation, and I am confident that I pay but a deserved tribute to your excellency's high character when I express my firm belief that no illegal steps will be allowed to those who seek to subvert the Government which I have the honor to represent.

I am, &c.,
(Signed) SAML. WHITING,
United States Consul.

Mr. Whiting was on the same day informed in answer by the colonial secretary that the governor would cause inquiries to be made into the circumstances alleged in his (Mr. Whiting's) letter. The letter was at the same time referred, by order of the governor, to the attorney-general of the colony, who reported as follows:[3]

[1] Appendix, vol. i, p. 58. [2] Ibid., p. 14. [3] Ibid., p. 15.

Assuming the cargo of the Fanny Lewis to be such as is stated by the United States consul, it is nevertheless one that can be legally imported here from the United Kingdom, and its future presumed destination does not invest it with any character of illegality which calls for or would authorize any action with respect to it on the part of the executive or other authorities of the colonies.

2. With respect to the Oreto the consul's allegation is to the effect that it is believed and reported by many residents here that she is being prepared and fitted out where she now lies, at Cochrane's Anchorage, which is within the limits of the port of Nassau, as a confederate privateer. Now if such is the fact, an offense against the foreign enlistment act has been committed, all parties implicated in which are liable to be criminally proceeded against for misdemeanor, and the vessel may be seized by any naval or revenue officer; but to justify proceedings either against the parties or the vessels, the matter must not rest on repute or belief alone, but the authorities
[62] must have positive facts to "ground their proceedings on, and unless the consul can adduce such, or they can be obtained through other channels, no steps can be taken either for the arrest of the vessel or those on board of her.

(Signed) G. C. ANDERSON.

On the 28th May, 1862, Commander McKillop, commanding Her Majesty's ship Bulldog, wrote to the governor as follows:[1]

BULLDOG, *Nassau, May* 28, 1862.

SIR: Several steamers having anchored at Cochrane's Anchorage, I sent an officer yesterday to visit them and muster their crews, and ascertain what they were and how employed.

The officer reports that one steamer, the Oreto, is apparently fitting and preparing for a vessel of war; under these circumstances I would suggest that she should come into the harbor of Nassau to prevent any misunderstanding as to her equipping in this port, contrary to the foreign-enlistment act, as a privateer or war vessel.

I am, &c.,

(Signed) H. F. McKILLOP.

No facts were furnished by Commander McKillop in support of the statement that the Oreto was "apparently fitting and preparing for a vessel of war." On receiving this communication the governor requested Commander McKillop to take such steps as he might think best for ascertaining the true character of the Oreto and the nature of her equipment; and if he should be convinced that she was really a man-of-war or privateer arming herself there, to concert measures for bringing her down into the part of the harbor adjacent to the town, or else to remove his own ship to Cochrane's Anchorage and there watch her proceedings from day to day.

Early in the month of June, 1862, the consignees of the vessel, who were a mercantile firm at Nassau, applied to the receiver-general (the proper officer for that purpose) for permission to load her for an outward voyage to Saint John's, New Brunswick.

Her Majesty's government is informed and believes that during the blockade of the Confederate States it was a common practice for ships leaving the port of Nassau, with the intention of endeavoring to run their cargoes into the blockaded ports, to clear for Saint John's, New Brunswick, and many of them took in their outward cargoes at the anchorages adjacent to the harbor of Nassau. In the application itself, therefore, there was nothing peculiar; but in consequence of the suspicions which had arisen about the ship, the receiver-general, before granting the usual permission to load, referred the matter to the governor, and it was brought by him before the executive council of the colony on the 4th June, 1862, when the following order was made:[2]

JUNE 4, 1862.

At an executive council his excellency the governor, with the advice of the board, was pleased to make the following order:

"1. That the Oreto, if practicable, should take in her cargo within the port of Nassau.

"2. That if, however, it be found impracticable, from the depth of water in port or

[1] Appendix, vol. i, p. 16. [2] Ibid., pp. 19, 53.

otherwise, that she cannot conveniently take in her cargo within the port, then that she be permitted to do so at Cochrane's Anchorage, under the direct supervision of officers of the revenue department to be specially appointed for the purpose.

"3. That in consequence of the suspicions which have arisen respecting the character of the Oreto, it is advisable that a British vessel of war should remain at Cochrane's Anchorage, in the immediate vicinity of the Oreto, while she is taking in cargo, and to prevent such vessel being detained at the anchorage an inconveniently long time there be imposed as a condition, for the permission for the Oreto to load without the port, that she complete her lading at Cochrane's Anchorage within a period to be designated by the chief officer of the revenue department."

His excellency was further pleased to direct that a copy of the foregoing order be furnished to the receiver-general and treasurer, and the commander of Her Majesty's ship Bulldog, respectively, for their information and guidance.

On the same 4th June, 1862, the United States consul sent to the governor the subjoined letter and inclosure:[1]

UNITED STATES CONSULATE,
Nassau, New Providence, June 4, 1862.

SIR: I have the honor to inform your excellency that I am in receipt of a communication from one of the crew (in prison here) of the steamer Oreto, now lying at Cochrane's Anchorage, a copy of which I inclose.

May I request your excellency to inform me if any steps have been taken by the colonial government to ascertain the true character of the Oreto, the service for which she is intended, and if her longer stay at Cochrane's Anchorage, under all the circumstances disclosed, is in accordance with Her Majesty's late neutrality proclamation.

I am, &c.,
(Signed) SAML. WHITING,
Consul.

[63] *[Inclosure.]

Mr. Jones to Mr. Whiting.

NASSAU PRISON, *June* 4, 1862.

SIR: The ship I am from is the Oreto, built by W. C. Miller, in Liverpool, after the model of the English navy gun-boats, with magazine, shot-lockers, ports, and bolts for twenty guns. Everything is rigged and ready for mounting; even all the articles necessary for seamen, such as hammocks, bedding, kettles, and pans, with three years' provisions. In short, she is a perfect man-of-war. Captain, James Duguid; chief officer, William Duggin; second officer, —— Hudson; I, sir, was third officer and boatswain. The chief steward and purser, who refused duty, are in jail here.

* * * * * * * *

Yours, &c.,
(Signed) EDW'D JONES.

The counsel renewed his representations on the 12th June.[2]

In conformity with the above resolutions of the executive council, the commander of the Bulldog proceeded to Cochrane's Anchorage, put one of his officers in charge of the Oreto, and placed his own ship near her. On the 7th June she was removed by the consignees to the part of the harbor close to Nassau.

On the 8th June, 1862, the governor received from Commander McKillop a letter dated the 6th,[3] reporting that he had visited and examined the Oreto; that she was fitted for war purposes, and had fittings at variance with the character of a merchant-vessel, but had on board no guns or ammunition.

On the 9th June the consignees began to load the vessel with cargo, part of which consisted of arms and ammunition, including some boxes of shells. On the morning of the 10th, however, the cargo which had been put on board was discharged, the consignees having obtained leave to land it, and to clear the vessel in ballast for the Havana.

Commander McKillop quitted Nassau on the 9th June, and was succeeded, as senior naval officer at the port, by Commander Hickley, of

[1] Appendix, vol. i, p. 19. [2] Ibid., p. 21. [3] Ibid., p. 20.

Her Majesty's ship Greyhound. On the 10th June, Commander Hickley went on board the Oreto, but, being informed that she had cleared for the Havana in ballast, and was to sail shortly, forbore at that time to examine her. On the 13th he again went on board of her, and sent in a report to the governor, which was as follows:[1]

GREYHOUND, NASSAU, NEW PROVIDENCE,
Bahamas, June 13, 1862.

SIR: On going on board the Oreto this morning, the captain informed me that the crew had refused to get the anchor up until they could be certain as to where the ship was going, as they did not know what might become of them after leaving port, and that the Oreto was a suspicious vessel. I then proceeded round the decks to note her fittings, &c., and to ascertain whether she had any warlike stores on board for her own equipment, and I have the honor to make the following report:

That the Oreto is in every respect fitted as a man-of-war, on the principle of the dispatch gun-vessels in Her Majesty's naval service.

That she has a crew of fifty men, and is capable of carrying two pivot-guns amidships and four broadside, both forward and aft, the ports being made to "ship and unship," port bars, breeching, side tackle, bolts, &c.

That she has shell-rooms, a magazine and light-rooms, and "handing-scuttles" for handing powder out of the magazine, as fitted in the naval service, and shot-boxes, for Armstrong shot, or short similar to them. Round the upper deck she has five boats, (I should say,) a ten-oared cutter, an eight-oared cutter, two gigs, and a jolly-boat, and davits for hoisting them up—her accommodation being in no respect different from her similar class of vessel in the royal naval service.

And on my asking the captain of the Oreto, before my own officers and three of his own, whether she had left Liverpool fitted in all respects as she was at present, his answer was, "Yes, in all respects," and "that no addition or alteration had been made whatever."

In witness of this report, and ready to testify to its correctness, we, the undersigned, affix our names.

(Signed) H. D. HICKLEY, *Commander.*
JNO. L. GILBY, *Lieutenant.*
C. S. CARDALE, *Lieutenant.*
B. B. STUART, *Master.*
P. O. M. PRESGRAVE, *Assistant Paymaster.*
E. B. GIDLEY, *Gunner.*
E. EDWARDS, *Carpenter.*
W. ROSKILLY, *Gunner's Mate.*
JOHN LEWAN, *Seaman Gunner.*

The attorney-general of the colony, being called upon to advise the governor upon this report, gave his opinion that it would not justify the detention of the vessel.

[64] *On the 15th June some of the crew of the Oreto came on board the Greyhound and stated to Commander Hickley that they had left the Oreto because they were not able to ascertain her destination, and that she was endeavoring to ship another crew. Commander Hickley thereupon seized the vessel, but, on the morning of the 17th, released her, the attorney-general being still of opinion that there was not evidence sufficient to justify a seizure. Notwithstanding this opinion, however, the seizure was forthwith (namely, on the morning of the 17th June) renewed, with the sanction of the governor, that officer holding that, after the statements which had been made to him by Commander Hickley, it was right and proper to submit the case to judicial investigation. The sanction of the governor was given on the 17th June, and proceedings were, by his direction, forthwith instituted in the vice-admiralty court of the colony (which was and is the court having by law jurisdiction in matters of this nature) for the condemnation of the vessel.

On the trial of the case, the following witnesses were examined on behalf of the Crown:

[1] Appendix, vol. i, p. 23.

Wynn Fely James Duggan, chief officer of the Oreto.
William Porter, seaman of Oreto.
Peter Hinson, seaman of Oreto.
Charles Ward, steward of Oreto.
Walter Irving, fireman of Oreto.
John Quinn, fireman of Oreto.
Thomas Robinson, fireman of Oreto.
Daniel Hamy, coal-trimmer of Oreto.
Commander Hickley, of Her Majesty's ship Greyhound.
Thomas Joseph waters, a master mariner in the merchant-service.
Lieutenant Cardale, royal navy.
Bay Beaufoy Stuart, master and pilot of Her Majesty's ship Greyhound.

One of the firm of merchants who were consignees of the vessel at Nassau, the master under whom she had made her outward voyage, and other witnesses, were examined for the defense. The consignee, in the course of his evidence, made the following statements on oath:[1]

We (meaning his firm) had the sole direction and management of the Oreto. I know of no person but Captain Duguid having any control over the Oreto. * * * In placing the cargo on board the Oreto, it was distinctly understood as cargo. I stated to the receiver-general that it was cargo only; that we intended to ship a full load by that vessel. We were fully aware that we could not ship such goods otherwise than as cargo, unless committing a breach of the foreign-enlistment act; and had we been ordered to do it, we should have handed the consignment over to some one else. No act was done by authority of Henry Adderly & Co. [the witness's firm] with the intent that the vessel should be employed as a cruiser.

On cross-examination he stated as follows:

The vessel was consigned to us by Messrs. Fraser, Trenholm & Co., of Liverpool. She was consigned to us as a merchant-vessel, and we considered her as such. No instruction, in the first instance, was given to us, except the general instructions of shipping cargoes by all their vessels to Messrs. W. and R. Wright, Saint John's, New Brunswick, on account and risk of J. R. Armstrong, of Liverpool. Mr. John Lowe, I think, brought a letter of introduction from Mr. Trenholm to the firm. I do not know whether Mr. Lowe was in any way interested in the Oreto. I do not recollect Mr. Lowe being mentioned in any correspondence which we received from Fraser, Trenholm & Co. We never had any transactions with Mr. Lowe in regard to the Oreto. She remained here several weeks before any attempt was made to ship cargo in her. We thought we should receive some instructions from our friends about her, but we did not. The shipping of the cargo on board the Oreto was performed by us under our general instructions. I am not prepared to say whether the vessel was actually going to Saint John's, New Brunswick.

The master, James Alexander Duguid, gave evidence as follows:[2]

I am master of the Oreto. * * * The owner of the Oreto, I believe, is named Mr. Thomas. I took my instructions from Fawcett, Preston & Co., the agents. * * * I arrived here at the latter end of April. I went to Cochrane's Anchorage, and communicated with H. Adderly & Co. as the agents of the vessel representing my owners in England. I had no instructions, when leaving England, who the agents of the vessel were; but, on my arrival here, I understood who they were. Mr. Lowe had a letter, and told me that Messrs. Adderly & Co. were the agents of the vessel, and they would enter the ship. I remained at Cochrane's Anchorage seven weeks; we were
[65] waiting orders * from the agents, who were waiting orders from the owners at home. * * * The shell was taken on board by the direction of the agents. I never thought that it was intended for the vessel, neither did I know that it was. * * * I had not intent, nor would I do so, to use the Oreto to commit hostilities against any power or state.

On cross-examination he said:[3]

I received my instructions from Messrs. Fawcett, Preston & Co. as to the voyage. They were written. [The instructions were produced in court.] In the conversation referred to in the letter dated 22d March, 1862, I proposed going to Nassau instead of Havana. No instructions were given to me as to the ultimate destination of the vessel after she reached Nassau. * * * I had no knowledge whatever, when the vessel cleared for Havana, that she was ultimately bound to the Confederate States of

[1] Appendix, vol. i, p. 47. [2] Ibid., p. 48. [3] Ibid., p. 50.

America. I have no knowledge whether the vessel was to return to Europe or not; I have no knowledge one way or the other. I have no knowledge whatever that she had been sold or agreed to be sold to any persons in the Confederate States.

With respect to the crew of the vessel, the consignee gave evidence as follows:[1]

We had some difficulty with the crew. They set up a plea that the vessel not having touched at Palermo, there had been a deviation of the voyage, and therefore they claimed their discharge. We demurred to this, but afterward agreed to pay them their wages up to date, and give them a bonus of £5 and pay their passage to England if they would not remain in the ship. This they refused to accept, stating that, from the several visits of the officers of the man-of-war on board the vessel, they considered she was of a suspicious character, and that they would not go in her unless the governor and Captain Hickley guaranteed their safety. Some accepted the terms that were offered. In consequence of this they were summoned before the police magistrate, and the case was brought under his adjudication. They elected to take their discharge. I was present at the time they then and there agreed to quit the ship. They then obtained leave to go on board for their clothes. The men were discharged by the magistrate. In consequence of this we got a shipping-master to ship another crew for the Oreto. I think there were fifteen or sixteen new hands then shipped. They received the usual advance. It was our intention to send her immediately to sea. I had arranged with the pilot to take her out the following morning, (Sunday;) they, however, missed the tide, the crew not having come on board. The vessel was again seized that day. The crew we shipped then left the Oreto. I have not seen them since, and all the advance that we paid is lost.

As to the same matter, the master stated as follows:[2]

Two mornings following, previous to this seizure, (I mean on Friday and Saturday,) I ordered my crew to get the vessel under way, but they refused, stating that I had deceived them once, and that they would not believe what I told them again. I told them she was cleared for Havana, and bound there as far as I knew. They still continued to refuse to work, and said that they would not believe anything that I told them. In consequence of this I sent warrants on board for them. They all appeared before the magistrate. They said that they would not proceed in the vessel unless they were guaranteed that they would be safe from any American cruisers. They then said that they would take their discharge, and the whole of them took their discharge.

On the 2d of August, 1862, the judge of the court pronounced judgment in the case, reviewing at considerable length the evidence which had been produced on both sides, and stating what, in his opinion, was the effect and value of that evidence. At the beginning, he said:[3]

To support the libel, it is necessary that proof should be given—

1st. That the aforesaid parties, having charge of the Oreto, while the vessel was within the jurisdiction of the vice-admiralty court of the Bahamas, attempted to equip, furnish, and fit her out as a vessel of war;

2dly. That such attempt was made with the intent that she should be employed in the service of the Confederated States of America; and,

3dly. That such service was to cruise and commit hostilities against the citizens of the United States of America. Witnesses have accordingly been produced to prove that the Oreto is constructed for and fitted as a war-vessel; that acts have been done in her, since she came to Nassau, which constitute an attempt to equip, fit, and arm her as a vessel of war; that from certain conversations which were overheard between the master of the vessel and a person who came out passenger in her, and from certain acts done by this person, there is proof that she was intended for the service of the Confederated States of America, and to cruise against the citizens of the United States.

After recapitulating the substance of the evidence, he said:[4]

The question now to be decided is, whether, upon a careful consideration of the evidence, there appears proof, or circumstantial evidence amounting to reasonable [66] proof, that a violation of the provisions of the foreign-enlistment act has been committed by the parties having charge of the Oreto. First, by attempting, by any act done since she came into this colony, to fit or equip the Oreto as a vessel of war. Secondly, by making such attempt for the purpose of fitting and equipping her as a vessel of war for the service of the Confederated States of America, to cruise and com-

[1] Appendix, vol. i, p. 46.
[2] Ibid., p. 49.
[3] Ibid., p. 39.
[4] Ibid., p. 50.

mit hostilities against the citizens of the United States of America. I have already said that what took place before the vessel came here can only be received as elucidatory or explanatory of what has occurred since that time. Two facts have been proved, both of which, it has been contended, are violations of the act. One is that, while the vessel lay at Cochrane's Anchorage, some blocks were stropped in such a manner that they might be used as gun-tackle blocks, and that they were so called in an entry in the ship's log-book, and by some of the crew. The other, that a number of boxes containing shells were put in the ship after she came into this harbor, and were taken out again.

He arrived at the conclusion that there was no sufficient evidence of any act done, or attempt made, since the Oreto had come to the colony, to fit out or equip her as a vessel of war.

He was further of opinion that, although the vessel might not be calculated to carry the ordinary bulky cargo of merchant-ships, she was capable of carrying a considerable quantity of some kinds of cargo, and that it was not improbable that a vessel of her description might be used for running the blockade.

He was also of opinion that the evidence connecting her with the Confederate States, as a vessel to be used in their service to cruise against the United States, was "slight."[1]

It rests entirely on her connection with a gentleman named Lowe, who came out passenger in her, and some evidence has been given from which it may be inferred that this Mr. Lowe is connected in some way with the Southern States. He is said by some of the crew to have exercised some control over the Oreto. This is denied on oath by Mr. Harris and Captain Duguid. But assuming it to be true, and assuming also that Mr. Lowe is connected with the Confederated States, no one can state that Mr. Lowe, or his employers, if he have any, may not have engaged the Oreto for the purpose of carrying munitions of war, which we have seen she is well capable of doing, and this would not have been an infringement of the act under which she is libeled. But the evidence connecting the Oreto with the Confederated States rests almost entirely on the evidence of the steward, Ward, whose testimony I have already explained my reasons for receiving with much doubt.

The judge, therefore, made a decree for the restoration of the vessel to the master, claiming on behalf of the alleged owner, John Henry Thomas—

Under all the circumstances of the case, I do not feel that I should be justified in condemning the Oreto. She will, therefore, be restored.

With respect to costs, although I am of opinion that there is not sufficient evidence of illegal conduct to condemn the vessel, yet I think all the circumstances of the case taken together seem sufficient to justify strong suspicion that an attempt was being made to infringe that neutrality so wisely determined upon by Her Majesty's government. It is the duty of the officers of Her Majesty's navy to prevent, as far as may be in their power, any such infringement of the neutrality. I think that Captain Hickley had *prima facie* grounds for seizing the Oreto; and I, therefore, decree that each party pay his own costs.

The assumption, on which the judge appears to have proceeded, that evidence of acts done before the Oreto arrived at the Bahamas could not be received, unless for the purpose of explaining or elucidating acts done after her arrival, may have been erroneous, and Her Majesty's government believes that it was so. Her Majesty's government believes that in a proceeding *in rem* against a ship, to enforce a forfeiture for an alleged infringement of the statute, a court, wherever locally situate within the dominions of the Crown, might lawfully receive and adjudicate upon evidence of such infringement, wherever the act or acts constituting it might have been committed.

The decision, however, although founded in part on an assumption that Her Majesty's government considers open, at least, to grave doubt, was the judgment of a court of competent jurisdiction, and was, as such, binding on the executive authorities of the colony. And it is further to be observed, that proof of acts done out of the limits of the colony

[1] Appendix, vol. i, p. 52.

had it been tendered and admitted, could not have altered the decision of the court, unless it had supplied evidence also of an unlawful intention.

Her Britannic Majesty's government, on the 31st July, 1862, received from the governor of the Bahamas intelligence of the measures taken in respect of the Oreto.

The seizure of the vessel was approved by Her Majesty's government, and the governor was informed that she should be detained until instructions could be given as to what further process should be
[67] instituted.[1] The lords commissioners of the treasury *were at the same time requested to consider the propriety of sending an officer of customs from Liverpool who could give evidence of the facts which occurred in regard to the Oreto at that place, and inquiries with that view were forthwith made by the commissioners of customs.

Intelligence of the decree of the vice-admiralty court of the Bahamas, ordering the restoration of the Oreto, was received by Her Majesty's government on the 16th September, 1862.

The Oreto was released, in obedience to the decree of the court; and on the 7th August, 1862, she was cleared at the Nassau custom-house as a merchant-vessel with cargo, for Saint John's, New Brunswick, as appears from the subjoined copy of the manifest of cargo, extracted from the books of the revenue department of the Bahamas:[2]

Outwards.

Manifest of cargo on board British steamer Oreto, A. L. Read, master, for St. John's, N. B. 178 tons; 12 feet water; 52 men.

4 kegs white lead.	28 barrels bread.
3 barrels oil.	8 cheese.
2 puncheons rum.	3 kegs butter.
6 cases ¼ and ⅛ boxes tobacco.	8 bags pepper.
4 barrels sugar.	4 boxes candles.
4 bags coffee.	

(Signed) J. L. READ.

NASSAU, *New Providence, August* 7, 1862.

On or about the 7th August the Oreto sailed from Nassau. Of the subsequent history of this vessel, from the time of her leaving Nassau to that of her arrival in a port of the Confederate States, Her Britannic Majesty's government has no knowledge; but it has been informed and believes that she was subsequently armed for war by a Captain Maffit, who had formerly held a commission in the United States Navy, and was then a commissioned officer in the service of the Confederate States; that she was then commissioned as a ship-of-war of the Confederate States, under the command of the said Maffit, and her named changed from "the Oreto" to "the Florida;" and that, after keeping the sea for a few days, she put in at the port of Cardenas, in Cuba, where (or at the Havana) she remained for nearly a month. On the 4th September the vessel arrived at and entered the port of Mobile in the Confederate States, which was then blockaded by three United States ships of war. She remained in port for upward of four months. She was repaired and refitted, and shipped a crew, and, in January, 1863, was sent to sea from Mobile, under the command of Maffit, as a Confederate States ship of war.

The United States consul at Nassau, after the departure of the

[1] Appendix, vol. i, pp. 29, 31, *et seq.* [2] Ibid., p. 58.

vessel, and on the 8th September, 1862, wrote to the governor as follows:[1]

UNITED STATES CONSULATE,
Nassau, New Providence, September 8, 1862.

SIR: I have the honor to inform your excellency that I have good authority for stating that the schooner Prince Alfred, of Nassau, took the Oreto's armament from this port and discharged the same on board that steamer at Green Cay, one of the Bahamas; that the Oreto afterward left Green Cay with the secession flag flying at her peak; that the Prince Alfred has returned to this port, and now lies at Cochrane's Anchorage, and I am credibly informed that her captain is again shipping men to be sent to the Oreto, in direct contravention of the foreign-enlistment act.

I earnestly urge upon your excellency the propriety of instituting some inquiry into these matters, and of preventing acts so prejudicial to the interests of the friendly government which I have the honor to represent.

I have, &c.,
(Signed) SAMUEL WHITING.

The colonial secretary replied as follows:

COLONIAL OFFICE,
Nassau, September 9, 1862.

SIR: In reply to your letter of the 8th instant, directed to the governor, I am instructed by his excellency to inform you that, if you feel assured that you have sufficient credible evidence to substantiate your allegation, and will put your evidence into the hands of the attorney-general, his excellency will direct a prosecution against the captain of the Prince Alfred, or others who may have been guilty of violating the foreign-enlistment act.

But his excellency has no authority to take any steps against the Oreto, which is out of his excellency's jurisdiction.

I have, &c.,
(Signed) C. R. NESBITT,
Colonial Secretary.

68] *No evidence whatever in support of the allegations of the consul appears to have been furnished by him, and no facts were produced on which a prosecution could be founded.

The subsequent history of the Florida, so far as it is known to Her Majesty's government from official reports and other sources, is as follows:

On the 25th January, 1863, the Florida came into the harbor of Nassau, where she remained twenty-six hours; and on the 24th February she put in at Barbados, where she remained about two days, (being detained for twenty-four hours at the request of the United States consul, in order to allow time for the sailing of a United States merchant-vessel then in the harbor.) Each of these colonies had been repeatedly visited by United States ships of war. It was alleged that in each of them some advantage or indulgence which United States vessels had not enjoyed had been granted to the Florida. But it was shown by the governors of those colonies that this assertion was entirely erroneous, and that no advantage was conceded to the Florida which had not been before granted to cruisers of the United States. It appeared, however, that both the United States ship San Jacinto and the confederate ship Florida had been permitted to obtain coal at Barbados within a less time than three months after they had respectively coaled at another British colony, the commander of each vessel having alleged that his supply of coal had been exhausted by stress of weather. In consequence of this the following dispatch was addressed by Her Majesty's secretary of state for the colonies to the governor of Barbados; and instructions, substantially to the same effect, were sent to the governors of the other British colonies in the West Indies:[2]

[1] Appendix, vol. i, p. 87. [2] Ibid., p. 102.

DOWNING STREET, *July* 16, 1863.

SIR: I have received and had under my consideration your dispatch of the 7th March, giving an account of certain communications which have passed between yourself and Rear-Admiral Wilkes, of the United States Navy.

You were quite right in refusing to enter into correspondence with that officer upon the matter adverted to in his dispatch of the 5th March. On this and other occasions it has become evident that interviews and explanations such as you accorded to Rear-Admiral Wilkes were made the pretext for placing on record charges more or less direct against officers of Her Majesty. And I think that, as the governor of one of Her Majesty's colonies owes no explanation of his conduct to an officer of the United States Navy, it will be prudent hereafter to avoid such explanations as far as the rules of courtesy will allow. It is the wish of Her Majesty's government that matters of complaint should in general be discussed between the two governments concerned rather than between any subordinate officers.

With regard to the issue of coal to the war-vessels of the belligerents, you have, I think, allowed yourself too much liberty in giving the "special permission" to take in fuel contemplated in Her Majesty's proclamation. Coal, in the opinion of Her Majesty's government, ought not to be supplied to a vessel of war of either belligerent except in such quantity as may be necessary to carry such vessel to the nearest port of her own country, (or, of course, any nearer port,) and this, I will add, without reference to the question whether the ports of that country are or are not under blockade. In case of such blockade it will rest with the officer in command to seek some more convenient destination. If within the period prescribed by the proclamation a vessel thus furnished with coal in one of Her Majesty's possessions should apply for a second supply in the same or another colony, the application may be granted if it is made to appear that, owing to real necessities arising from stress of weather, the coal originally given has been prematurely exhausted before it was possible that the vessel could, under existing circumstances, have reached the destination for which she coaled.

But if it should be the case that the vessel has not, since taking in coal, been *bona fide* occupied in seeking her alleged destination, but has consumed her fuel in cruising, the coal should not be replenished under the terms of the proclamation. Such a case is not one to which "special permission" referred to in that proclamation was intended to apply.

Her Majesty's government are of opinion that the regulations of the proclamation thus interpreted should be strictly adhered to without any arbitrary concession to either belligerent. It is by such a course that misunderstandings and complaints of partiality will be most certainly avoided. An unauthorized concession to one belligerent, it may be safely assumed, will not be accepted by those to whom it is made as a justification of a similar concession in an opposite direction.

I approve of your having communicated to the officers administering the government of the other West Indian islands the fact that certain Federal and confederate vessels of war had called at Barbados.

I shall instruct the governors of the other islands to follow the same course, communicating in all cases the name of the vessel, its alleged destination, and the date of receiving the coal, and the quantity allowed to be placed on board.

I have, &c.,
(Signed)

On the 8th May, 1863, the Florida entered the harbor of Pernambuco, and received permission to remain there for twenty-four hours. Captain Maffit stated to the president of the province that the ma-
[69] chinery of his ship was out of order and required repair; and *he obtained, on this ground, leave to stay for three or four days. The machinery was repaired on shore, and he sailed on the 12th May.

The United States consul at Pernambuco addressed a remonstrance to the authorities protesting against any accommodation being granted to a vessel which he insisted should be regarded as piratical.

The president replied that there had been no infringement of the letter or spirit of international law in the course which had been pursued by the authorities; that he could not agree with the consul in regarding the Florida as piratical, and could not admit his protest.

On the 16th July, 1863, the Florida came into the port of St. George's, Bermuda, her commander having previously applied for and obtained leave to enter for the purpose of procuring coals and making necessary repairs. Being unable to obtain coal from private persons, Captain

Maffit requested to be allowed to purchase some from the Government stores, and he requested also that permission might be given him to have his ship repaired in the government dock-yard. These requests were refused, as appears from the following correspondence:[1]

Mr. Walker to Governor Ord.

SAINT GEORGE'S, *July* 18, 1863.

SIR: At the request of Captain Maffit, commanding Confederate States steamer Florida, I have the honor to inform your excellency that, on his application at the dock-yard this morning for coals, he was informed by Captain Glasse that, under his present instructions, he did not feel authorized to furnish the Florida with the small amount even which Captain Maffit required.

As the Florida must therefore of necessity be detained at this port as a vessel in distress until the arrival of coals which are daily expected, Captain Maffit begs me to inquire of your excellency if the privilege will be accorded to him of proceeding to the dock-yard for the purpose of having effected some repairs to machinery and hull of ship, which are of essential importance, and which cannot be effected in the port of St. George's.

I have, &c.,
(Signed) NORMAN STEWART WALKER.

Governor Ord to Mr. Walker.

MOUNT LANGTON, *July* 19, 1863.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th instant, informing me, at the request of Captain Maffit, of the Confederate States steamer Florida, that, having applied yesterday at the dock-yard for coals, he was informed by Captain Glasse, royal navy, that he did not feel authorized to furnish the Florida with the small amount she required, and further stating that, as the Florida must therefore of necessity be detained at this port as a vessel in distress until the arrival of coals, which are daily expected, Captain Maffit begs you to inquire whether the privilege will be accorded to him of proceeding to the dock-yard for the purpose of having effected some repairs to machinery and hull of ship which are of essential importance, and which cannot be effected in the port of St. George's.

Having referred this application to Captain Glasse, superintendent of the dock-yard, I have the honor to acquaint you that he informs me that he does not feel himself at liberty to allow of any repairs to the machinery or hull of the Confederate States steamer of war Florida being effected in Her Majesty's dock-yard.

In making this communication I have to express a hope that Captain Maffit may yet find it in his power to obtain for his vessel such supplies of coal and such necessary repairs as will enable her to proceed without delay to her destination, but I must at the same time point out that Her Majesty's instructions (with a copy of which Captain Maffit was supplied on the 16th instant) are very stringent as to the limitation of the stay in British waters of vessels of war of the United States or Confederate States, and that it is necessary that whatever may be required to enable the Florida to take her departure from these islands should be provided in the shortest possible period. If, however, Captain Maffit should find it impossible to procure at the present time whatever may be requisite for this purpose, I must request that he will at once proceed with the Florida to Grassy Bay, there to remain until his departure from the colony is rendered practicable.

I have, &c.,
(Signed) H. ST. GEORGE ORD.

Mr. Walker to Governor Ord.

ST. GEORGE'S, *July* 20, 1863.

SIR: Since the communication which I had the honor to address to your excellency on Saturday evening last, Captain Maffit has been informed that there is a large quantity of coals at this port belonging to the commissariat department.

He therefore requests me, in his great emergency, to apply, through your excellency, to the proper officers, for a quantity sufficient to carry his vessel to some other coaling depot.

[70] *Captain Maffit will be happy to have the opportunity of paying for the coals in coin immediately, or of having them returned in kind, within two or three weeks, at any point in the island which may be indicated.

I have, &c.,
(Signed) NORMAN STEWART WALKER.

[1] Appendix, vol. i, p. 109.

Governor Ord to Mr. Walker.

MOUNT LANGTON, *July* 20, 1863.

SIR: I have the honor to acknowledge the receipt of your letter of this day's date, requesting, on behalf of Captain Maffit, Confederate States steamer Florida, that he may be permitted to take from a large quantity of coal belonging to the commissariat department at St. George's a quantity sufficient to carry his ship to some other coaling depot.

In reply I have to inform you that the coal in question is not under my control, but under that of Colonel Munro, the commandant of the troops.

I have, &c.,
(Signed) H. ST. GEORGE ORD.

Colonel Munro refused to allow coal to be supplied to the Florida from the commissariat department. She subsequently obtained some from a vessel which arrived at the colony from Halifax.

The commandant of the fort at Bermuda had, on the arrival of the Florida there, consented to exchange salutes with her. This act was disapproved by Her Majesty's government for the reason that, while Great Britain had recognized the Confederate States as a belligerent, she had not recognized those States as independent or their government as a sovereign government.

On the 23d August, 1863, the Florida arrived at Brest, having two days before taken and destroyed at sea a United States merchant-ship bound from Liverpool to New York. The following report of what then occurred at Brest was subsequently furnished to Her Britannic Majesty's government by Her Majesty's consul at Brest, and is believed by Her Britannic Majesty's government to be true and correct:[1]

BREST, *September* 22, 1871.

MY LORD: I have the honor to acknowledge the receipt of your lordship's dispatch of the 12th instant, instructing me to furnish you with a report containing all the particulars of which I could obtain information respecting the proceedings at this port of the confederate cruiser Florida in 1863-'64.

In obedience to your lordship's commands I have now the honor to report that the Florida arrived in Brest Bay at 11 o'clock on the morning of the 23d of August, 1863; and her commander having declared that she entered the port in order that her engines and copper sheathing might be repaired, and for purposes of general refitting, she obtained free pratique on the evening of the following day.

Captain Maffit, the commander of the Florida, was informed by the admiral of the port, (préfet maritime,) Vice-Admiral Count de Gueyton, that he was at liberty to effect the repairs of the ship and provide her with coal and provisions, the same as any merchant-ship.

Captain Maffit then selected as his agents Messrs. Massurier & Sons; but to this selection an objection was raised by Count de Gueyton, on account of their not being sworn brokers; and, at his suggestion, M. Aumaître, sworn broker and interpreter, was appointed agent.

Later, a M. Puquet du Belley arrived from Paris as the special agent of the Confederate States for France. He, however, did not remain here long, but confirmed the appointment of M. Aumaître.

The commercial resources of Brest proving insufficient to effect the repairs of the Florida, application was made to the port admiral to allow her to enter the government dock-yard, and permission for her to do so was granted, it being stipulated that all expenses should be re-imbursed by the agent, M. Aumaître, and that her powder-magazine should be cleared before entering the dock. To effect the latter operation, a government barge was furnished for the purpose of removing the ammunition; and this barge was, later, moored in the bay.

On the 9th of September, 1863, the Florida entered the government dock, and remained there for general repairs for a period of about five weeks.

On the 17th of the same month the Federal corvette Kearsarge put into Brest for a supply of coal; but this appears simply to have been a pretext, as she took but a small quantity on board. She, however, remained at anchor in the bay, with fires banked, until the 30th of October, when she proceeded to sea, Queenstown being reported as her destination.

[1] Appendix, vol. i, p. 126.

The Federal corvette, however, returned to her anchorage at Brest on the 27th of November, and remained there until the 4th of December, when she again left Brest, and cruised off Cherbourg until, as I am informed, her commander ascertained that the confederate vessel Georgia, then repairing at that port, would not be ready for sea for some time; whereupon the Kearsarge returned to Brest Bay, and anchored there on the 11th of the same month.

Meanwhile the Florida had completed her repairs in the dock-yard, and after-
[71] ward took moorings "in the merchant harbor of Brest, where she was slowly refitted. On the 27th of December she was moved to the roadstead, and there anchored within a half a mile of the Kearsarge.

At half-past 1 o'clock on the afternoon of the 29th of December the Kearsarge again left Brest for an unknown destination.

It appears that some of the mechanism of the more heavy guns of the Florida had never been regulated; and her commander desiring to have this done, an application was made to the port admiral for permission to land the guns for that purpose, but this was at once and positively refused, on the ground that such an act might be interpreted as an equivalent to allowing a re-enforcement of arms.

But, it appears, her small-arms were allowed to be landed, in order to be repaired by a gun-maker of Brest, named Kock. This permission was granted on the agent, M. Aumaitre, giving a guarantee to the authorities of the custom-house that they should be reshipped on board the Florida.

No arms or ammunition were furnished to the Florida while here.

Through M. Aumaitre, the agent, I have ascertained that thirty-five seamen claimed and obtained their discharge from the Florida here; that they were, in part, replaced by others, chiefly natives of Belgium, Germany, Italy, and Southern Austria, brought to Brest by railway direct from Paris, in numbers never exceeding four at a time, and that they were quietly sent on board in similar numbers.

The Federal corvette Kearsarge re-appeared in Brest waters on the 3d of January, 1864, and after steaming about the bay to within a mile of the town, again proceeded to sea.

The confederate cruiser Florida, being ready for sea, left Brest between 9 and 10 o'clock on the evening of the 9th of February, 1864, in charge of a pilot, and at a distance of about thirty miles from this port passed through the dangerous passage Du Raz, inside the Saints, landing the pilot at Audierne.

On the 18th of February the Kearsarge, coming from Cadiz, re-appeared in Brest Roads; but her commander, finding that the Florida had left, departed the following day for an unknown destination.

During the stay of these two ships of war in the port of Brest the French ship-of-the-line Louis XIV was placed in a position to watch their movements, the commanding officer having orders, in the event of one of these vessels quitting the port, to prevent the other from leaving until after the expiration of twenty-four hours.

I am informed that the agent, M. Aumaitre, paid the authorities of the dock-yard for repairs to the Florida 135,000 francs, and that the total sum expended on her here exceeded 300,000 francs, which amounts were later re-imbursed by Mr. Taylor, the pay-master of the ship.

The Florida, on her arrival at Brest, was commanded by Captain Maffit, who was later replaced by Captain Barney, who was again relieved by Captain Morris, under whose command she finally left this port.

In conclusion, I beg leave to state that your lordship's dispatch of the 12th instant, calling for this report, having been received by Captain Clipperton, then acting consul, the day before I took charge of the consulate, he had already collected valuable information on the subject to which it refers, and I am, therefore, indebted to him for a portion of that furnished in the present dispatch. I would, however, add that before availing myself of such information I had it verified by persons competent to do so.

I have, &c.,
(Signed) HARRY RAINALS.

The United States minister at Paris, Mr. Dayton, addressed several remonstrances to the French government against the facilities afforded at Brest to the Florida, but without success. An account of these remonstrances and the answers given to them was furnished by him to his Government, and is contained in the following extracts from his dispatches, published by order of the Government of the United States:

I have this day sent out a note to the minister informing him that I had learned that the Florida had come into Brest, not for repairs of machinery only, but for coal, which had been denied to her at Bermuda, from which port she had come. The fact is that, as she is a good sailing-vessel, and has crossed the Atlantic, as I believe, prin-

cipally by that means, neither coal nor machinery is necessary to her safety, although a great convenience, doubtless, in enabling her to prey upon our commerce. It may well be doubted whether the rule which limits aid in such cases to what is called for by necessity and humanity applies at all to her case.—(*Mr. Dayton to Mr. Seward*, 25th August, 1863.)

I have to-day had a conversation with M. Drouyn de Lhuys upon the subject. He says they are much annoyed that the Florida should have come into a French port. But, having recognized the South as belligerents, they can only deal with the vessel as they would deal with one of our ships of war under like circumstances. They will give her so much aid as may be essential to her navigation, though they will not provide her with anything for war. I stated that she was a good sailer, and really needed nothing in the shape of repairs to machinery, &c., to enable her to navigate. He said that if she were deprived of her machinery she would be *pro tanto* disabled, crippled, and liable, like a duck with its wings cut, to be at once caught by our steamers. He said it would be no fair answer to say the duck had legs, and could walk or swim. But he said that, in addition to this, the officers of the port had reported to the government that the vessel was leaking badly; that she made water at so much per hour, (giving the measurement,) and unless repaired she would sink; that this fact, coming from their own officers, he must receive as true. They said nothing, however, about her copper being damaged, but reported that she needed calking and tarring, if I understood the French word rightly. I then asked him if he understood that the
[72] rule in such cases required or justified the grant of a "government dock or basin for such repairs, especially to a vessel like this, fresh from her destructive work in the channel, remarking that, as she waited no judicial condemnation of her prizes, when repaired in this government dock she would be just at hand to burn other American ships entering or leaving Havre and other French ports. He said where there was no mere commercial dock, as at Brest, it was customary to grant the use of any accommodations there to all vessels in distress, upon the payment of certain known and fixed rates; that they must deal with this vessel as they would with one of our own ships, or the ships of any other nation, and that to all such these accommodations would be granted at once.—(*The same to the same*, 5d September, 1863.)

On the 19th instant I received a note from M. Drouyn de Lhuys requesting to see me on the next day (yesterday) in reference to certain matters of business. I of course attended at the foreign office at the time named. He then informed me that it had been reported to him that the United States steamship Kearsarge, Captain Winslow, now in the port of Brest, kept her steam constantly up, with the view, as supposed, of instantly following and catching, if possible, the Florida, upon her leaving that port; and that France, having resolved to treat this vessel as a regularly commissioned ship of war, could not, and would not, permit this to be done. He said that the rule which requires that the vessel first leaving shall have twenty-four hours the start must be applied. To avoid the difficulty which he said must inevitably follow a disregard of this rule by Captain Winslow, he requested me to communicate to him the determination of this government, and apprise him of the necessity of complying with the rule. Inasmuch as nothing was to be gained by inviting the application of force, and increased difficulties might follow that course, I have communicated to Captain Winslow the letter of which I herewith send you a copy.

M. Drouyn de Lhuys furthermore informed me that this government, after much conference, (and, I think, some hesitation,) had concluded not to issue an order prohibiting an accession to the crew of the Florida while in port, inasmuch as such accession was necessary to her navigation. They had made inquiries, it would seem, and said they had ascertained that the seventy or seventy-five men discharged after she came into Brest were discharged because the period for which they had shipped had expired. He said, furthermore, that it was reported to him that the Kearsarge had likewise applied for some sailors and a pilot in that port, as well as for coal and leave to make repairs, all of which had been and would be, if more were needed, cheerfully granted.

I told him I was quite confident the Kearsarge had made no attempt to ship a crew there, and that, as respects a pilot, that stood on ground peculiar to itself, and had no reference to the general principle.

The determination which has been reached by the French authorities to allow the shipment of a crew, or so large a portion of one, on board of the Florida while lying in their port, is, I think, wrong, even supposing that vessel a regularly commissioned ship of war. I told M. Drouyn de Lhuys that, looking at it as a mere lawyer, and clear of prejudices which my official position might create, I thought this determination an error. He said, however, that in the conference they had reached that conclusion unanimously, although a majority of the ministry considering the question were lawyers.—(*The same to the same*, 21st October, 1863.

The Florida remained in the harbor of Brest, repairing and refitting, during nearly six months, from the 23d August, 1863, till the 9th February, 1864.

On the 13th April, 1864, the Florida touched at Bermuda, but remained only a very short time, anchoring on the afternoon of that day and putting to sea the same evening.

On the 18th June, 1864, she again arrived at Bermuda, and obtained permission to remain during five days for the purpose of making necessary repairs. The circumstances which occurred, and the course pursued by the authorities at Bermuda, are set forth in the subjoined dispatch from the acting governor:[1]

BERMUDA, *July* 7, 1864.

SIR: I have the honor to report the following particulars connected with a recent visit to these islands of the Confederate States steamer Florida. On Saturday, the 18th June, the Florida arrived at the outer anchorage, and Commander Morris sent one of his officers to report his arrival and ask permission to take in coal, and permission, also, to effect some repairs. I was informed that no supplies or coal had been furnished to the Florida in any English port for ten months past, and that it would not be possible to ascertain the full extent of the repairs necessary until the vessel came into port. I then gave permission for the Florida to be brought into Saint George's Harbor for twenty-four hours, exclusive of Sunday. The vessel came in accordingly on Sunday, and, shortly after his arrival, Commander Morris waited upon me and delivered me a letter asking that the repairs which were found necessary might be carried out at Her Majesty's dock-yard. I immediately transmitted this letter to Vice-Admiral Sir James Hope, who declined to allow any repairs to be carried out in the dock-yard, but offered to send competent officers on board the Florida to ascertain the extent of the repairs necessary. Commander Morris was very glad to obtain the opinion of these officers, and the knowledge was necessary to me, in order that I might judge what time should be granted. The admiral sent the flag lieutenant, chief engineer, and two assistant engineers on board the Florida, and they reported on the vessel:

"1st. She can proceed to sea with such repairs as can be made good here, which, as far as we are able to judge, will require five days for one man, viz, a diver for two days and a fitter for three days, or three complete days in all.

"2d. She can proceed to sea with safety in her present state under steam, but
[73] under sail *is unmanageable with her screw up in bad weather, and her defects aloft (cross-trees) render main top-mast unsafe. This could be made good in two days."

I consulted personally with Sir James Hope, and gave Commander Morris permission to remain five working days in Saint George's to complete the repairs. I also furnished Commander Morris with printed extracts of some portion of the circular dispatch dated the 16th July, 1863, informing him of the regulations under which alone he could be allowed to take in coal. He asserted that Mobile was the first confederate port he expected to visit, and reports that he took in about eighty tons of coal. The five working days expired on the 27th June, and the Florida quitted Saint George's harbor on that day, but was seen off the island on the following day and also on the morning of the 29th. I had the advantage of the advice of Sir James Hope until he quitted Bermuda in the Duncan for Halifax, and our views were completely in accord. During this visit the conduct and demeanor of Commander Morris were all that I could wish, and he appeared very desirous to avoid the least infringement of the instructions laid down in Her Majesty's proclamation. Since that time, however, I cannot think Commander Morris has behaved quite properly. On the 28th June the Florida was seen off the islands all day, and also on the morning of the 29th. Again she was signaled off the south side on the 2d July, about 7.30 a. m., and on the afternoon, about 4 p. m. I received a verbal message to say that two men, supposed to be deserters, had been found on board, and requested that I would send some persons off to identify them, in a steam-tug that was going off to visit the Florida. The departure of this tug was delayed until after sunset, and the fort adjutant then perceived that she was going to tow out a barge full of coal. This officer immediately told Mr. Black, who is temporarily acting as agent for the Confederate States, that he ought not to take out coal without the governor's permission. Mr. Black then sent me a note, of which I inclose a copy, asking for permission to take out fifteen tons of coal to the Florida in consequence of her having returned to Bermuda for the purpose of bringing back the two deserters. To this I immediately replied that I could not sanction any further issue of coal. The fort adjutant was present when my letter was delivered to Mr. Black, and at that moment the tug-steamer started off to the Florida with the barge in tow. Mr. Black stated that she had gone without his orders, and that he would follow her in a gig. This he did, and I am informed that about half the coals had been already taken on board before Mr. Black had arrived in the gig, and the remainder was brought back.

[1] Appendix, vol. i, p. 132.

The deserter belonging to the royal engineers was placed on board and handed over. It will be observed in Mr. Black's note that he stated the deserters were discovered in twenty-four hours. The Florida remained in sight for at least thirty-six hours after her departure, and the deserter was not landed for five days.

Commander Morris never applied to me for permission to take the coal, I suppose, being fully aware that the circular dispatch of the 16th July, 1863, prohibited coal being supplied to vessels such as his, which "had consumed their fuel in cruising" as he had done in sight of these islands.

Mr. Black, who belongs to the Southern States, states that he sent the coal at the request of Commander Morris. The Florida then immediately left the islands, and has not since been seen.

I beg to annex a copy of a printed extract from the circular dispatch of the 16th July, 1863, which I forwarded to Commander Morris.

I have, &c.,
(Signed) WILLIAM MUNRO.

With reference to these circumstances the following correspondence passed between Mr. Adams and Earl Russell:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, August 19, 1864.

MY LORD: It is with very great regret that I find myself compelled to call the attention of your lordship to the abuse made of the neutrality of the island of Bermuda by the vessels under the direction of the insurgents in the United States, in making it a base for hostile operations against the commerce of a friendly nation. I have the honor to submit to your consideration the copy of an extract from a report of Mr. Allen, consul of the United States at that place, to the Secretary of State, in which he makes certain statements respecting the reception there of the gun-boat known under the name of the Florida, and her subsequent proceedings, which appear to be directly in violation of the regulations heretofore laid down by Her Majesty's government. I beg permission to remind your lordship of the remonstrances which were promptly made, a short time since, in the case of one of the vessels of the United States, for proceedings of a far less exceptionable character.

Not doubting the disposition of Her Majesty's government to do full justice in the premises, I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure.]

Mr. Allen to Mr. Seward.

UNITED STATES CONSULATE, *Bermuda, June* 30, 1864.

SIR: The Florida, after remaining in port nine days, went to sea last Monday evening, but has not been far from land. She is in sight to-day from the hills, about
[74] six miles off. She boards all vessels *approaching these islands. She received all the coal and supplies they wanted. The coal was taken from the ship Storm King, C. L. Hobson, of Richmond, agent.

I am, &c.,
(Signed) C. M. ALLEN, *Consul.*

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *September* 5, 1864.

SIR: In reply to your note of the 19th ultimo respecting the proceedings of the Florida at Bermuda, I have the honor to inform you that Her Majesty's government have received reports on the same subject from Her Majesty's colonial and naval authorities, and that, after due consideration of the same, they are of opinion that although some disposition was manifested by the commander of the Florida to evade the stringency of Her Majesty's regulations, the most commendable strictness and diligence in enforcing those regulations was observed on the part of the authorities, and that no substantial deviation, either from the letter or from the spirit of those regulations, was permitted to, or did, take place.

I have further the honor to inform you that Her Majesty's government consider that the conduct of the lieutenant-governor of Bermuda on the occasion in question was perfectly proper.

I am, &c.,
(Signed) RUSSELL.

[1] Appendix, vol. i, p. 134.

On or about the 5th October, 1864, the Florida entered the port of Bahia. On this occasion the following correspondence passed between the United States consul at that place and the president of the province of Bahia:[1]

The United States consul to the president of the province.

CONSULATE OF THE UNITED STATES OF AMERICA,
Bahia, October 5, 1864—9 a. m.

SIR: This morning a steamer anchored in this port bearing the flag adopted by those who are involved in the rebellion against the Government of the United States of America, and I am informed that the said vessel is the Florida, which is engaged in capturing vessels navigating under the flag of the United States of America, and in destroying them by making bonfires of them and their cargoes.

The vessel in question is not commissioned by any recognized government whatever, and her officers and crew are composed of persons of various nationalities, who are not subject to any international or civilized law, and are consequently not entitled to the privileges and immunities conceded to vessels navigating under the flag of a civilized nation. I therefore protest, in the name of the United States of America, against the admission of this vessel to free practice, by which she might be enabled to supply herself with coal, provisions, tackle, or utensils of any kind whatever, or receive on board any persons whatever; finally, against any assistance, aid, or protection might be conceded to her in this port, or in any other belonging to this province.

I likewise claim that the piratical cruiser which, in combination with the pirate Alabama, violated the sovereignty of the imperial government of Brazil, by capturing and destroying vessels belonging to citizens of the United States of America within the territorial waters of Brazil, near the island of Fernando de Noronha, in April, 1863, be detained with all her officers and crew, in order to answer for so flagrant a violation of the sovereignty of the government of Brazil and of the rights of citizens of the United States within the jurisdiction of the Brazilian government.

I avail, &c.,
(Signed) THOMAS F. WILSON,
Consul of the United States.

His Excellency ANTONIO JOAQUIM DE SILVA GOMES,
President of the Province of Bahia.

The president of the province to Mr. Wilson.

PALACE OF THE GOVERNMENT OF THE PROVINCE OF BAHIA,
October 5, 1864.

In a note, dated this day, Mr. Thomas F. Wilson, consul of the United States, claims that the steamer Florida, now anchored in this port, shall not be admitted to free pratique, nor obtain permission to provide herself with coal, provisions, supplies, and utensils of any kind whatever, nor receive on board any person whatever; he likewise requests that, as the cruiser, in combination with the Alabama, violated the sovereignty of the imperial government of Brazil, by capturing and destroying vessels belonging to citizens of the United States of America within the territorial waters of the empire, near the island of Fernando de Noronha, in April, 1863, she may be detained, with all her officers and crew, in order to answer for this flagrant violation of the sovereignty of the government of Brazil and of the rights of citizens of the United States within the jurisdiction of the Brazilian government.

In reply to the consul, I have to inform him that, as the said vessel belongs to the Confederate States, in whom the imperial government recognized the character
[75] of belligerents, all the assistance *required by humanity may be furnished her, which does in no wise constitute assistance for warlike purposes, as laid down by international law, and does not conflict with that neutrality which this government studiously seeks to preserve, and has always preserved, in the contest between the States of North America. The undersigned cannot, therefore, admit the first portion of the claim of the consul, in the general manner in which it was presented, and particularly in relation to those articles considered as contraband of war, in conformity with instructions issued on that subject by the imperial government, and according to which the said vessel will only be permitted to remain in this port for the length of time absolutely indispensable.

In regard to the second part of his note, it is my duty to observe to the consul that, even if it were fully established that the Florida had previously violated neutrality, such a proceeding would scarcely authorize us to refuse her permission to enter the

[1] Extracted from the "World" (American journal) of December 2, 1864. (See Appendix, vol. i, p. 146.)

ports of the empire, and would never warrant us to commit the acts required by the consul, which would be equivalent to a hostile rupture, without the intervention of the supreme government of the state, which is alone competent to authorize such a rupture.

I renew, &c.,
(Signed) ANTONIO JOAQUIM DA SILVA GOMES.

Mr. THOMAS F. WILSON,
Consul of the United States.

Before dawn on the morning of the 7th October, 1864, the Florida was surprised and captured in the port of Bahia by the United States war-steamer Wachusett, and was carried as a prize to the United States. Shortly after her arrival she sank in Chesapeake Bay, in consequence, as was affirmed, of having sprung a leak during her voyage and of having been injured while at anchor by a United States transport-steamer.

The government of Brazil protested immediately, in strong terms, against this violation of its sovereignty and of the neutrality of the port; and the United States minister at Rio declared, in reply, that the capture of the Florida had not been directed or authorized by himself, condemned the act of the captain of the Wachusett, and promised that reparation should be made.

Mr. Seward, on learning what had occurred, wrote as follows to the United States minister at Rio:[1]

Mr. Seward to Mr. Webb.

DEPARTMENT OF STATE,
Washington, November 11, 1864.

SIR: In the years 1862 and 1863, remonstrances were addressed by us to the government of Brazil against the policy, different as it was from that of all other American States, in regard to the furnishing of shelter and a haven to pirates who were engaged in depredating upon the peaceful commerce of the United States. The correspondence came to a close without having produced any satisfactory result, and not without leaving a painful presentiment that a continuance of measures so injurious to the United States would sooner or later affect the harmonious relations heretofore existing between the two countries.

We have just now heard of the capture of the Florida by the Wachusett, at Bahia, and of the consequent hostilities adopted by the Brazilian forces in that port; but we have no particular information of the circumstances which preceded the collision, and our information concerning the transaction itself is incomplete. At the same time, we are absolutely without knowledge of any correspondence that it may have elicited between yourself and the Brazilian government.

In this stage of the matter, the President thinks it proper that you should inform the minister of foreign affairs that we are not indisposed to examine the subject upon its merits carefully, and to consider whatever questions may arise out of it, in a becoming and friendly spirit, if that spirit shall be adopted by His Imperial Majesty's government.

I am, &c.,
(Signed) WILLIAM H. SEWARD.

With reference to this occurrence, the following correspondence passed between the Brazilian minister at Washington and the United States Secretary of State:[2]

[Translation.]

IMPERIAL LEGATION OF BRAZIL,
Washington, December 12, 1864.

The undersigned, chargé d'affaires *ad interim* of His Majesty the Emperor of Brazil, has just received orders from his government to address himself, without delay, to that of the United States of North America about an act of the most transcendent gravity done on the morning of the 7th day of October last, in the port of the capital of the province of Bahia, by the war-steamer Wachusett, belonging to the Navy of the

[1] Appendix, vol. i, p. 152. [2] Ibid., p. 153.

Union, an act which involves a manifest violation of the territorial jurisdiction of the empire, and an offense to its honor and sovereignty.

On the fourth day of the month referred to, there entered that port, where already had been lying for some days the Wachusett, the confederate steamer Florida, for the purpose, declared by her commander to the president of the province, to supply herself with alimentary provisions and coal, and to repair some tubes of her machinery.

[76] "The president, proceeding in accordance with the policy of neutrality which the empire resolved to adopt on the question in which unfortunately these States are involved, and in conformity with the instructions in this respect issued by the imperial government on the 23d of June of the year last past, assented to the application of the commander of the Florida, and fixed the term of forty-eight hours for taking in supplies, and fixing, in dependence on the final examination by the engineer of the arsenal, the determination of the residue of the time which, peradventure, should be deemed indispensable for the completion of the repairs.

The same authority at once took, with the greatest impartiality, all the measures necessary to avoid any conflict between the two hostile steamers.

The Florida was placed under cover of the batteries of the Brazilian corvette D. Januaria, on the in-shore side, at the request of her commander, who, reposing on the faith with which, without doubt, the chief authority of the province could not fail to inspire him, considered himself sheltered from any attack of his adversary, and in this confidence not only staid a night on shore, but gave liberty to a great part of the crew of his vessel.

It behooves me to say that, as soon as the confederate steamer entered the port at Bahia, the American consul, Wilson, addressed to the president a dispatch claiming that the Florida should not be admitted to free pratique, and that on the contrary she should be detained, alleging for this, that that vessel had, in concert with the Alabama, violated the neutrality of the empire by making captures in 1863, near the island of Fernando de Noronha.

Such exaggerated pretensions, founded on facts not proven, which had already been the subject of discussion between the imperial government and the legation of the United States, could not be even listened to.

If the president should have refused the hospitality solicited by the commander of the Florida, he would have infringed not only the duties of neutrality of the empire, but also those of humanity, considering that steamer, coming from Teneriffe, had been sixty-one days at sea, was unprovided with food, and with machinery in the worst condition.

Afterward, the president having stated to the same consul that he hoped, from his honor and loyalty toward a friendly nation, that he would settle with the commander of the Wachusett that he should respect the neutrality and sovereignty of the empire, he was answered affirmatively, the consul pledging his word of honor. Things were in this condition, the term of forty-eight hours being to expire at one o'clock of the afternoon of the 7th, when, about dawn of that day, the commander of the steamer Wachusett, suddenly leaving his anchorage, passed through the Brazilian vessels of war and approached the Florida.

On passing across the bows of the Brazilian corvette D. Januaria he was hailed from on board that he must anchor; but, as he did not attend to this intimation, and continued to approach the Florida, at the same time firing a gun and some musketry, the commander of the naval division of the empire stationed in those waters sent an officer to board the Wachusett and inform her commander that the ships of the division and the forts would open fire upon her if she should attack the Florida. The Brazilian officer was not allowed to make fast to the Wachusett, but the officer of the deck hailed him, saying in reply that he accepted the intimation given, that he would do nothing more, and that he was going to return to his anchorage. The commander of the Brazilian division then thought proper to ratify his intimation by firing a gun, upon which a complete silence followed between the two ships Wachusett and Florida.

At the time this was passing, the corvette D. Januaria, on board which the commander of division had hoisted his flag, lay head to flood, the steamer Florida anchored B. B., side by side of her, and quite close to the shore, and between her and the corvette the Wachusett stopped her wheels.

The commander of division then observing, notwithstanding the darkness of the night, that the Wachusett, from the position in which she was, kept moving onward and was passing ahead of the corvette, in a course E. B., became convinced that, in fact, she was steering for her anchorage, thus complying with the promise made.

But a few moments afterward, perceiving that the Florida was in motion, the commander discovered that the Wachusett was taking her off in tow by means of a long cable.

Surprised at such an extraordinary attempt, the commander immediately set about stopping this, and redressing, at the same time, as behooved him, the offense thus done to the dignity and sovereignty of the empire.

But availing himself of the darkness of the night, and of other circumstances, the commander of the Wachusett succeeded in carrying his prize over the bar, and escaping the just punishment he deserved.

The consul, Wilson, preferred to abandon his post, withdrawing on board the Wachusett.

The government of His Majesty, as soon as it had official information of the event, addressed to the legation of the United States at Rio Janeiro a note, in which, giving a succinct exposition of the fact, it declared that it had no hesitation in believing it would hasten to give to it all proper assurances that the Government of the Union would attend to the just reclamation of the empire as promptly and fully as the gravity of the case demanded.

In correspondence with this expectative note, the worthy representative of the United States was prompt in sending his reply, in which he declares he is convinced that his Government will give to that of the empire the reparation which is due to it.

Such are the facts to which the undersigned has received order to call all the attention of the honorable William H. Seward, Secretary of State of the United States.

The principles of international law which regulate this matter, and in respect of which there is not the least divergence among the most distinguished publicists, are common and known to all. The undersigned would fail to recognize the high intelligence of the honorable Mr. Seward, if, perchance, he should enter in this respect into fuller developments.

He limits himself then only to recall a memorable example, in which these [77] principles, invariably *sustained by the United States, had entire application.

In 1793, the great Washington then being President of the United States, and the illustrious Jefferson Secretary of State, the French frigate l'Embuscade captured the English ship Grange, in Delaware Bay, thus violating the neutrality and the territorial sovereignty of the United States. The American Government remonstrated energetically against this violation, and required from the government of the French republic not only the immediate delivery of the captured vessel, but also the complete liberation of all the persons found on board. This reclamation was promptly satisfied. Much more grave, certainly, is the occurrence in the port of the province of Bahia which makes the subject of the present note. By the special circumstances which preceded and attended it, this act has no parallel in the annals of modern maritime war.

The commander of the Wachusett not only gravely offended the territorial immunities of the empire, passing beyond the laws of war by attacking treacherously, during the night, a defenseless ship, whose crew, much reduced because more than sixty men were on shore with the commander and several officers, reposed unwary beneath the shadow of the protection which the neutrality of the empire guaranteed to them; and so open was the violation, so manifest the offense, that the enlightened American press was almost unanimous in condemnation of the inexcusable proceeding of Commander Collins.

On this occasion, remembering the United States, whose antecedents are well known and noted in history by the energetic defense of and respect for neutral rights, of these unshaken principles, the undersigned cannot consider the event which occurred at Bahia otherwise than as the individual act of the commander of the Wachusett, not authorized or approved by his Government, and that it will consequently give to the government of His Majesty the Emperor the explanations and reparation which, in conformity with international laws, are due to a power which maintains friendly and pacific relations with the United States.

The just reclamation of the imperial government being thus presented, the undersigned awaits the reply of the honorable Mr. Seward, and, fully confiding in his exalted wisdom and in the justice of the Government of the United States, he has not even for a moment doubted but that it will be as satisfactory as the incontestable right which aids the empire and the vast gravity of the offense which was done to it may require.

The undersigned, &c.,

(Signed) IGNACIO DE AVELLAR BARBOZA DA SILVA.

His Excellency the Hon. WILLIAM H. SEWARD.

Mr. Seward to Mr. Barboza.

DEPARTMENT OF STATE,
Washington, December 20[1], 1864.

SIR: I have the honor to acknowledge the receipt of your note, which sets forth the sentiments of the imperial government of Brazil concerning the capture of the Florida by the United States war-steamer Wachusett in the port of Bahia.

You will, of course, explain to your government that, owing to an understanding between you and myself, your note, although it bears the date of the 12th December, was not submitted to me until the 21st instant.

Jealousy of foreign intervention in every form, and absolute non-intervention in the

[1] Should be dated December 26, 1864.

domestic affairs of foreign nations, are cardinal principles in the policy of the United States. You have therefore justly expected that the President would disavow and regret the proceedings at Bahia. He will suspend Captain Collins and direct him to appear before a court-martial. The consul at Bahia admits that he advised and incited the captain and was active in the proceedings. He will therefore be dismissed. The flag of Brazil will receive from the United States Navy the honor customary in the intercourse of friendly maritime powers.

It is, however, not to be understood that this Government admits or gives credit to the charges of falsehood, treachery, and deception which you have brought against the captain and the consul. These charges are denied on the authority of the officers accused.

You will also be pleased to understand that the answer now given to your representation rests exclusively upon the ground that the capture of the Florida was an unauthorized, unlawful, and indefensible exercise of the naval force of the United States within a foreign country in defiance of its established and duly recognized government.

This Government disallows your assumption that the insurgents of this country are a lawful naval belligerent; and, on the contrary, it maintains that the ascription of that character by the government of Brazil to insurgent citizens of the United States, who have hitherto been and who still are destitute of naval forces, ports, and courts, is an act of intervention in derogation of the law of nations and unfriendly and wrongful, as it is manifestly injurious, to the United States.

So also this Government disallows your assumption that the Florida belonged to the aforementioned insurgents, and maintains, on the contrary, that that vessel, like the Alabama, was a pirate, belonging to no nation or lawful belligerent, and therefore that the harboring and supplying of these piratical ships and their crews in Brazilian ports were wrongs and injuries for which Brazil justly owes reparation to the United States as ample as the reparation which she now receives from them. They hope and confidently expect this reciprocity in good time, to restore the harmony and friendship which are so essential to the welfare and safety of the two countries.

In the positions which I have thus assumed the imperial government will recognize an adherence to rights which have been constantly asserted, and an enduring sense of injuries which have been the subject of earnest remonstrance by the United States during the last three years. The government of Brazil is again informed that these positions of this Government are no longer deemed open to argument.

It does not, however, belong to the captains of ships of war of the United
[78] States, or to the *commanders of their armies, or to their consuls residing in foreign ports, acting without the authority of Congress, and without even Executive direction, and choosing their own time, manner, and occasion, to assert the rights and redress the wrongs of the country. This power can be lawfully exercised only by the Government of the United States. As a member of the family of nations, the United States practice order, not anarchy, as they always prefer lawful proceedings to aggressive violence or retaliation. The United States are happy in being able to believe that Brazil entertains the same sentiments. The authorities at Bahia are understood to have unsuccessfully employed force to overcome the Wachusett and rescue the Florida, and to have continued the chase of the offender beyond the waters of Brazil, out upon the high seas. Thus, in the affair at Bahia, subordinate agents, without the knowledge of their respective governments, mutually inaugurated an unauthorized, irregular, and unlawful war. In desisting from that war on her part, and in appealing to this Government for redress, Brazil rightly appreciated the character of the United States, and set an example worthy of emulation.

The disposition of the captured crew of the Florida is determined upon the principles which I have laid down. Although the crew are enemies of the United States, and, as they contend, enemies of the human race, yet the offenders were, nevertheless, unlawfully brought into the custody of this Government, and therefore they could not lawfully be subjected here to the punishment which they have deserved; nor could they, being enemies, be allowed to enjoy the protection of the United States. They will therefore be set at liberty, to seek a refuge wheresoever they may find it, with the hazard of recapture when beyond the jurisdiction of this Government.

The Florida was brought into American waters, and was anchored, under naval surveillance and protection, at Hampton Roads. While awaiting the representation of the Brazilian government, on the 28th November, she sunk, owing to a leak which could not be seasonably stopped. The leak was at first represented to have been caused, or at least increased, by a collision with a war-transport. Orders were immediately given to ascertain the manner and circumstances of the occurrence. It seemed to affect the Army and the Navy. A naval court of inquiry and also a military court of inquiry were charged with the investigation. The naval court has submitted its report, and a copy thereof is herewith communicated. The military court is yet engaged. So soon as its labors shall have ended, the result will be made known to your Government. In the mean time it is assumed that the loss of the Florida was a

consequence of some unforeseen accident, which cast no responsibility upon the United States.

I avail, &c.,
(Signed) WILLIAM H. SEWARD[1]

Senhor IGNACIO DE AVELLAR BARBOZA DA SILVA, &c.

It has been stated above that the crew of the Florida were shipped principally at Mobile. Representations having been made to Her Majesty's government to the effect that some of the men who served in her were British subjects, the law-officers of the Crown were consulted on the question whether proceedings could be instituted against these persons for an infringement of the foreign-enlistment act. The law-officers advised as follows:[2]

We do not think that sufficient evidence has yet been obtained to warrant the institution of proceedings against any of these seamen.

If it were shown that their enlistment on board the Florida had taken place in England, or within British jurisdiction, they might perhaps have been presumed to be natural-born British subjects, owing obedience at that time to British law; so far, at all events, as to make slight evidence in confirmation of that presumption sufficient.

Next it appears, by the fourth column of the list annexed to Thompson's first affidavit, that, with two exceptions only, all these men took service on board the Florida beyond the limits of British jurisdiction, and by far the greater number of them at Mobile, within the territory of the Confederate States. With respect to the two, Dennis Sullivan and Charles Ballinger, who are alleged, the one to have enlisted at Nassau, and the other to have been shipped at the first, (which we suppose means when the ship first sailed from England,) no evidence whatever has yet been obtained in support of either of these allegations.

In the former report of the law-officers upon this subject it was noticed that the first section of the foreign-enlistment act, which prohibits the enlistment of British subjects in the belligerent service of any foreign power, is not limited (as the seventh section as to equipping vessels is) to acts done within British jurisdiction, but that it seems to be intended to apply, and is in its literal terms applicable, to all natural-born British subjects who may enter into the service of any foreign belligerent power without Her Majesty's license, wheresoever the prohibited act may be done. Assuming this to be the construction and effect of the statute, we apprehend that it would be impossible to procure a conviction under it in the case of persons who were not resident within British jurisdiction at the time of their taking foreign service, without strict proof that such persons were in fact, at the time of their doing so, natural-born British subjects, owing exclusive obedience, wherever they might be, to the statute law of Great Britain; and we think it is at least very doubtful whether those sections of the statute would be held to be applicable to any persons who were naturalized, or even domiciled, at the time of their taking such service, within the territory of the belligerent power in whose service they enlisted.

[59] *Bearing these considerations in mind, we turn to the original depositions of Thompson and Müller, and we find in the former no evidence whatever bearing upon the essential question of the nationality and origin of any of these seamen; while the statements of the latter, as to seventeen of the thirty-three persons who are described as of British origin in the second column of the lists, depend upon admissions or inferences of so loose a character that we do not think any reliance ought to be placed upon them. So far as they rest only on the deponent's belief, they are inadmissible; so far as they prove that certain individuals associated on board the ship as Irishmen, and sung Irish songs, &c., they are insufficient; and we think it would be unsafe to trust to the statements of this witness as to the admissions said to have been made by some of the parties (as we count them, by seven only, viz, Considine, Conway, Doris, McNevin, McCabe, McGarroch, and Welch) to the effect that Ireland was their home, their country, or the place of residence of their parents. Every one of these seven persons, it is to be remembered, joined the Florida, according to the lists, at Mobile; and it may serve as some test of the value of this kind of evidence, that the same witness makes very similar statements as to four other seamen, (Taylor, Rivers, Grover, and King,) with a view to prove them to be either Englishmen or Irishmen, although they are described as native Americans in the second column of the list referred to in his own affidavit.

The opinion which we had formed, as above expressed, upon the perusal of the original depositions of Thompson and Müller is strongly confirmed by the subsequent

[1] These two letters, as well as the preceding one, are extracted from the Daily Morning Chronicle, (American journal,) of 31st December, 1864.

[2] Appendix, vol. i, p. 124.

affidavit of Thompson, who in that affidavit speaks of admissions made to him by eighteen of these seamen, to the effect that they were born in Ireland, Scotland, or England; and by six others, to the effect either that they were Irishmen, or that Ireland or Liverpool was their home.

But of these twenty-four persons there are only seven on whose history any further light is thrown by these depositions, and every one of these seven appears to have emigrated from Great Britain or Ireland to the United States previous to the existing civil war, under circumstances from which it is *prima facie* to be inferred that, at the time when he took service on board the Florida, he was either a naturalized or a domiciled American. Some of them appear to have resided for many years in the United States; and two (Good and Doris) are expressly stated to have acquired the rights of citizens there, and to have voted at presidential and other elections. With respect to the rest of the crew there is nothing whatever to show that they may not have enlisted under similar circumstances.

As to all persons so situated, we think that it would be a reasonable construction of the foreign-enlistment act to hold that, although they are natural-born subjects of Her Majesty, the word "foreign," which pervades the first section of the statute, is not, as regards them, applicable to the service into which they have entered. And even assuming that this construction might not be admitted, we think that it would not be a proper exercise of discretion on the part of the Crown to attempt to put the statute in force, so far as relates to acts done by persons so situated beyond the limits of British jurisdiction, and within the territory in which such persons may have been naturalized or domiciled.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.

LINCOLN'S INN, *October* 20, 1863.

SUMMARY.

The Florida was a vessel built at Liverpool by a firm of ship-builders there, to the order of another Liverpool firm carrying on an extensive business as engineers and iron-founders. She was stated to be ordered for and on account of a person resident at Liverpool, who was a partner in a mercantile house at Palermo, and upon the completion of the vessel this person was duly registered as her owner, on his own declaration. Her builders stated that, according to the best of their information, they believed her to be really destined for Palermo.

She was a vessel built for speed, and her internal fittings and arrangements were not such as are usual in vessels constructed to carry cargo, but were suitable to a ship of war. She was unarmed, however, and had on board no guns, carriages, ammunition, or other warlike stores of any kind.

No facts whatever proving, or tending to prove, that she was intended to cruise or carry on war against the United States were ever, before the departure of the ship, communicated by Mr. Adams or Mr. Dudley to Her Majesty's government. Mr. Adams alleged, indeed, that advances of money had been made to the firm which ordered the vessel, and to that which constructed her, by the firm of Fraser, Trenholm & Co., who were believed to have been engaged in blockade-running, and to be employed as agents for the government of the Confederate States; but this assertion, whether material or not, was not substantiated in any way. These were all the facts respecting the vessel which had been communicated to or were in the possession of Her Majesty's government previously to and at the time of her departure from England.

It is certain that, had the vessel been seized by Her Majesty's government, a court of law would have ordered, and would indeed have been bound to order, the immediate restoration of her, for want of evidence to support a forfeiture. It was not the duty of Her Majesty's government to seize a vessel which it would have been the duty of a court of law to restore.

[80] The means and opportunities possessed by Mr. Adams and Mr. Dudley of ascertaining *the truth were fully as great as those possessed by Her Majesty's government. They were, indeed, greater; since Mr. Dudley was the United States consul on the spot, in constant communication with Americans of all classes, always on the watch for information, and provided with means of gaining it which could not have been employed by Her Majesty's government.

The vessel sailed from Liverpool with a clearance for Palermo and Jamaica, unarmed, and with no warlike stores of any kind, under the command of a master belonging to the British mercantile marine, and manned by a crew who were not enlisted for the confederate service and had no thought or intention of engaging in it, and who afterward left the ship as soon as they conceived a suspicion that she might be employed in that service.

Although no directions, nor any notice or warning, had or could have been sent to the authorities of Nassau before her arrival there, the vessel was, upon her arrival and while she remained there, strictly watched by order of the governor; a ship of war was placed near to her; she was finally seized by order of the governor; and proceedings were instituted against her in the proper court of the colony. On being released by the decree of the court, she sailed from Nassau unarmed, and with a clearance for New Brunswick.

Before committing any hostilities against vessels of citizens of the United States, she sailed for and entered a port of the Confederate States, where she remained during more than four months and was put in condition for war, and enlisted a crew, and from whence she was finally sent out to cruise.

She was commissioned as a ship of war of the Confederate States, and was commanded by an officer commissioned by the *de facto* government of those States. She was received on the footing of a public ship of war in the ports of neutral nations—Spain, France, and Brazil; and on the same footing, and in the same manner, without favor or partiality, she was received likewise in those ports of the British colonies which she had occasion to enter.

The United States ships of war blockading the port of Mobile failed to capture the Florida when she entered it, under circumstances which made the capture so easy of accomplishment that the officer to whose incapacity the failure was due was dismissed the service. They again failed to capture her when she left the port to commence her cruise. From that time, until her unlawful seizure in the port of Bahia, she was, for a year and nine months, engaged in cruising, sometimes near the coast of the United States. It does not appear, however, that during all that period she was ever encountered or chased by a United States ship of war. No serious endeavor, indeed, to intercept or capture her appears to have been made on the part of the Government of the United States.

Her Britannic Majesty's government cannot admit that, in respect of the Florida, it is justly chargeable with any failure of international duty for which Great Britain owes reparation to the United States.

[81]

*PART VI.

STATEMENT OF FACTS RELATIVE TO THE ALABAMA.

On the 24th June, 1862, Earl Russell received from Mr. Adams the following note with an inclosure:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, June 23, 1862.

PART VI.—The Alabama.

MY LORD: Some time since it may be recollected by your lordship that I felt it my duty to make a representation touching the equipment from the port of Liverpool of the gun-boat Oreto with the intent to make war upon the United States. Notwithstanding the statements returned from the authorities of that place, with which your lordship favored me in reply, touching a different destination of that vessel, I have the strongest reason for believing that that vessel went directly to Nassau, and that she has been there engaged in completing her armament, provisioning, and crew for the object first indicated by me.

I am now under the painful necessity of apprising your lordship that a new and still more powerful war-steamer is nearly ready for departure from the port of Liverpool on the same errand. This vessel has been built and launched from the dock-yard of persons, one of whom is now sitting as a member of the House of Commons, and is fitting out for the especial and manifest object of carrying on hostilities by sea. It is about to be commanded by one of the insurgent agents, the same who sailed in the Oreto. The parties engaged in the enterprise are persons well known at Liverpool to be agents and officers of the insurgents in the United States, the nature and extent of whose labors are well explained in the copy of an intercepted letter of one of them which I received from my Government some days ago, and which I had the honor to place in your lordship's hands on Thursday last.

I now ask permission to transmit, for your consideration, a letter addressed to me by the consul of the United States at Liverpool, in confirmation of the statements here submitted, and to solicit such action as may tend either to stop the projected expedition, or to establish the fact that its purpose is not inimical to the people of the United States.

Renewing, &c.,
(Signed) CHARLES FRANCIS ADAMS.

The "copy of an intercepted letter" referred to in the above note was a paper purporting to be a copy of a letter or report from a confederate officer of artillery, addressed to some person unknown, and relating to purchases of military supplies for the confederate army, and to vessels employed in blockade-running. The inclosure was as follows:

Mr. Dudley to Mr. Adams.

UNITED STATES CONSULATE,
Liverpool, June 21, 1862.

SIR: The gun-boat now being built by the Messrs. Laird & Co., at Birkenhead, opposite Liverpool, and which I mentioned to you in a previous dispatch, is intended for the so-called confederate government in the Southern States. The evidence I have is entirely conclusive to my mind. I do not think there is the least room for doubt about it. Beaufort and Caddy, two of the officers from the privateer Sumter, stated that this vessel was being built for the Confederate States. The foreman in Messrs. Lairds'

[1] Appendix, vol. i, p. 177.

yard says she is the sister to the gun-boat Oreto, and has been built for the same parties and for the same purpose; when pressed for a further explanation he stated that she was to be a privateer for the "southern government in the United States." The captain and officers of the steamer Julia Usher, now at Liverpool, and which is loaded to run the blockade, state that this gun-boat is for the confederates, and is to be commanded by Captain Bullock.

The strictest watch is kept over this vessel; no person except those immediately engaged upon her is admitted into the yard. On the occasion of the trial trip made last Thursday week, no one was admitted without a pass, and these passes were issued to but few persons, and those who are known here as active secessionists engaged in sending aid and relief to the rebels.

I understand that her armament is to consist of eleven guns, and that she is to enter at once, as soon as she leaves this port, upon her business as a privateer.

The vessel is very nearly completed: she has had her first trial trip. This trial was successful, and entirely satisfactory to the persons who are superintending her
[82] construction. She will be finished *in nine or ten days. A part of her powder-canisters, which are to number 200, and which are of a new patent, made of copper with screw tops, are on board the vessel; the others are to be delivered in a few days. No pains or expense have been spared in her construction. Her engines are on the oscillating principle, and are 350 horse-power. She measures 1,050 tons burden, and will draw 14 feet of water when loaded. Her screw or fan works in a solid brass frame casting, weighing near two tons, and is so constructed as to be lifted from the water by steam-power. The platforms and gun-carriages are now being constructed.

When completed and armed she will be a most formidable and dangerous craft; and, if not prevented from going to sea, will do much mischief to our commerce. The persons engaged in her construction say that no better vessel of her class was ever built.

I have, &c.,
(Signed) THOS. H. DUDLEY.

The attention of Mr. Adams had been called by Mr. Dudley to the vessel mentioned in the foregoing note and inclosure, both before she was launched and immediately afterward. The launching of this vessel took place on the 15th May, 1862, about a month before the date of Mr. Adams's first representation to Earl Russell. Mr. Dudley's attention had been directed to the vessel in November, 1861, immediately on his arrival at Liverpool.

Immediately on the receipt of Mr. Adams's note, Mr. Hammond, one of the under-secretaries of state for foreign affairs, wrote, by the direction of Earl Russell, to the secretary to the treasury and to the law-officers of the Crown, as follows:[1]

Mr. Hammond to the secretary to the treasury.

FOREIGN OFFICE, *June* 25, 1862.

SIR: I am directed by Earl Russell to transmit to you a copy of a letter from the United States minister at this court, calling attention to a steamer reported to be fitted out at Liverpool as a southern privateer, and inclosing a copy of a letter from the United States consul at that port, reporting the result of his investigations into the matter; and I am to request that you will move the lords commissioners of Her Majesty's treasury to cause immediate inquiries to be made respecting this vessel and to take such steps in the matter as may be right and proper.

I am, &c.,
(Signed) E. HAMMOND.

Mr. Hammond to the law-officers of the Crown.

FOREIGN OFFICE, *June* 25, 1862.

GENTLEMEN: I am directed by Earl Russell to transmit to you a letter from the United States minister at this court, calling attention to a steamer reported to be fitting out at Liverpool as a southern privateer, and inclosing a copy of a letter from the United States consul at that port reporting the result of his investigations into the matter; and I am to request that you will take these papers into your consideration and favor Lord Russell with any observations you may have to make upon this question.

I am, &c.,
(Signed) E. HAMMOND.

[1] Appendix, vol. i, pp. 180, 181.

Copies of Mr. Adams's note and Mr. Dudley's letter were sent with each of the two preceding letters for the information of the lords commissioners of the treasury and the law-officers, respectively. Earl Russell, on the same day, wrote as follows to Mr. Adams:[1]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *June* 25, 1862.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d instant, calling attention to a steam-vessel which you state is now fitting out at Liverpool with the intention of carrying on hostilities against the Government of the United States; and I have to acquaint you that I have lost no time in referring the matter to the proper department of Her Majesty's government.

I am, &c.,
(Signed) RUSSELL.

The law-officers of the Crown, on the 30th June, 1862, made their report, as follows:[2]

The law-officers of the Crown to Earl Russell.

TEMPLE, *June* 30, 1862.

MY LORD: We are honored with your lordship's commands signified in Mr. Hammond's letter of the 25th June instant, stating that he was directed by your
[83] lordship to transmit to us a letter from the United States minister at this court, calling attention to a steamer reported to be fitted out at Liverpool as a southern privateer, and inclosing a copy of a letter from the United States consul at that port, reporting the result of his investigations into the matter, and to request that we would take these papers into our consideration and favor your lordship with any observations we might have to make upon this question.

In obedience to your lordship's commands we have taken these papers into consideration, and have the honor to report—

That, if the representation made to Her Majesty's government by Mr. Adams is in accordance with the facts, the building and equipment of the steamer in question is a manifest violation of the foreign-enlistment act, and steps ought to be taken to put that act in force and to prevent the vessel from going to sea.

The report of the United States consul at Liverpool, inclosed by Mr. Adams, besides suggesting other grounds of reasonable suspicion, contains a direct assertion that the foreman of Messrs. Laird, the builders, has stated that this vessel is intended as a privateer for the service of the government of the Southern States; and, if the character of the vessel and of her equipment be such as the same report describes them to be, it seems evident that she must be intended for some warlike purpose.

Under these circumstances we think that proper steps ought to be taken, under the direction of Her Majesty's government, by the authorities of the customs at Liverpool, to ascertain the truth, and that, if sufficient evidence can be obtained to justify proceedings under the foreign-enlistment act, such proceedings should be taken as early as possible. In the mean time, Mr. Adams ought, we think, to be informed that Her Majesty's government are proceeding to investigate the case; but that the course which they may eventually take must necessarily depend upon the nature and sufficiency of any evidence of a breach of the law which they may be enabled to obtain; and that it will be desirable that any evidence in the possession of the United States consul at Liverpool should be at once communicated to the officers of Her Majesty's customs at that port.

We have, &c.,
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

The commissioners of customs, on the 1st July, 1862, reported to the treasury as follows:[3]

Report by the commissioners of customs.

To the lords commissioners of Her Majesty's treasury:

Your lordships having referred to us the annexed letter from Mr. Hammond, the under-secretary of state for foreign affairs, transmitting, by desire of Earl Russell, copy of a letter from the United States minister at this court, calling attention to a

[1] Appendix, vol. i, p. 180. [2] Ibid., p. 181. [3] Ibid., p. 182.

steamer reported to be fitting out at Liverpool as a southern privateer, and inclosing copy of a letter from the United States consul at that port, reporting the result of his investigation into the matter, and requesting that immediate inquiries may be made respecting this vessel, and such steps taken in the matter as may be right and proper.

We report that, immediately on receipt of your lordships' reference, we forwarded the papers to our collector at Liverpool for his special inquiry and report, and we learn from his reply that the fitting out of the vessel has not escaped the notice of the officers of this revenue, but that as yet nothing has transpired concerning her which has appeared to demand a special report.

We are informed that the officers have at all times free access to the building-yards of the Messrs. Laird, at Birkenhead, where the vessel is lying; and that there has been no attempt on the part of her builders to disguise what is most apparent, that she is intended for a ship of war; and one of the surveyors in the service of this revenue, who had been directed by the collector personally to inspect the vessel, has stated that the description of her in the communication of the United States consul is correct, with the exception that her engines are not constructed on the oscillating principle. Her dimensions are as follows: Length, 211 feet 6 inches; breadth, 31 feet 8 inches; depth, 17 feet 8 inches; and her gross tonnage, by the present rate of admeasurement, is 682.31 tons. The surveyor has further stated that she has several powder-canisters on board, but, as yet, neither guns nor carriages, and that the current report in regard to the vessel is, that she has been built for a foreign government, which is not denied by the Messrs. Laird, with whom the surveyor has conferred; but they do not appear disposed to reply to any questions respecting the destination of the vessel after she leaves Liverpool. And the officers have no other reliable source of information on that point; and having referred the matter to our solicitor, he has reported his opinion that, at present, there is not sufficient ground to warrant the detention of the vessel, or any interference on the part of this department, in which report we beg to express our concurrence. And, with reference to the statement of the United States consul, that the evidence he has in regard to this vessel being intended for the so-called confederate government in the Southern States is entirely conclusive to his mind, we would observe that, inasmuch as the officers of customs of Liverpool would not be justified in taking any steps against the vessel unless sufficient evidence to warrant her detention should be laid before them, the proper course would be for the consul to submit such evidence as he possesses to the collector at that port, who would thereupon take such measures as the provisions of the foreign-enlistment act would require. Without the production of full and sufficient evidence to justify their proceedings, the seizing officers might entail on themselves and on the government very serious consequences.

[84] *We beg to add that the officers at Liverpool will keep a strict watch on the vessel, and that any further information that may be obtained concerning her will be forthwith reported.

(Signed) THO. F. FREMANTLE.
GRENVILLE C. L. BERKELEY.

CUSTOM-HOUSE, *July* 1, 1862.

A copy of the report of the commissioners of customs was, on the 4th July, 1862, transmitted by Earl Russell to Mr. Adams, inclosed in the following letter:[1]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *July* 4, 1862.

SIR: With reference to my letter of the 25th ultimo, I have the honor to inclose a copy of a report from the commissioners of customs, respecting the vessel which you have been informed is being built at Liverpool for the government of the so-styled Confederate States, and in accordance therewith I would beg leave to suggest that you should instruct the United States consul at Liverpool to submit to the collector of customs at that port such evidence as he may possess tending to show that his suspicions as to the destination of the vessel in question are well founded.

I am, &c.,
(Signed) RUSSELL.

Mr. Adams replied as follows:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, July 7, 1862.

MY LORD: I have the honor to acknowledge the receipt of your note of the 4th instant, covering a copy of the report from the commissioners of customs respecting a

[1] Appendix, vol. i, p. 185.

vessel presumed by me to be in course of preparation at Liverpool to carry on hostile operations against the United States.

In accordance with your lordship's suggestion, I shall at once instruct the consul of the United States to submit to the collector of customs at that port such evidence as he possesses to show that the suspicions he entertains of the character of that vessel are well founded.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

On the 10th July, 1862, the collector of customs at Liverpool received from Mr. Dudley the following letter:[1]

The United States consul to the collector of customs, Liverpool.

LIVERPOOL, *July* 9, 1862.

SIR: In accordance with a suggestion of Earl Russell, in a communication to Mr. Adams, the American minister in London, I beg to lay before you the information and circumstances which have come to my knowledge relative to the gun-boat now being fitted out by Messrs. Laird, at Birkenhead, for the confederates of the southern United States of America, and intended to be used as a privateer against the United States.

On my arrival, and taking charge of the consulate at Liverpool in November last, my attention was called by the acting consul and by other persons to two gun-boats being or to be fitted out for the so-called confederate government: the Oreto, fitted out by Mr. Miller and Messrs. Fawcett, Preston & Co., and the one now in question. Subsequent events fully proved the suspicion with regard to the Oreto to be well founded; she cleared from Liverpool in March last for Palermo and Jamaica, but sailed direct for Nassau, where she now is receiving her armament as a privateer for the so-called confederate government; and my attention was called repeatedly to the gun-boat building by Mr. Laird, by various persons, who stated that she also was for a confederate privateer, and was being built by the Messrs. Lairds for that express purpose.

In May last two officers of the southern privateer Sumter, named Caddy and Beaufort, passed through Liverpool on their way to Havana and Nassau, and while here stated that there was a gun-boat building by Mr. Laird, at Birkenhead, for the southern confederacy; and not long after that a foreman employed about the vessel in Mr. Laird's yard stated that she was the sister of the Oreto, and intended for the same service, and, when pressed for an explanation, further stated that she was to be a privateer for the southern government in the United States.

When the vessel was first tried, Mr. Wellsman, one of the firm of Fraser, Trenholm & Co., (who are well known as agents for the confederate government,) Andrew and Thomas Byrne, and other persons, well known as having been for months actively engaged in sending munitions of war for said government, were present, and have accompanied her on her various trials, as they had accompanied the Oreto on her trial trip and on her departure.

In April last the southern screw-steamer Annie Childs, which had run the blockade out of Charleston, and the name of which was changed at this port to the Julia Usher, was laden with munitions of war, consisting of a large quantity of powder, rifled cannon, &c., by Messrs. Fraser, Trenholm & Co., for the southern confederacy, and left
[85] Liverpool to run the blockade under the command of a Captain *Hammer, and having on board several of the crew of the privateer Sumter, to which I have before referred.

For some reason unknown this vessel came back and is now here. Since her return a youth named Robinson, who had gone in her as a passenger, has stated that the gun-boat building at Lairds' for the southern confederacy was a subject of frequent conversation among the officers while she (the Julia Usher) was out. That she was all the time spoken of as a confederate vessel; that Captain Bullock was to command her; that the money for her was advanced by Fraser, Trenholm & Co.; that she was not to make any attempt to run the blockade, but would go at once as a privateer; that she was to mount eleven guns; and that if the Julia Usher was not going, the six men from the Sumter, who were on board the Julia Usher, were to join the gun-boat. This youth, being a native of New Orleans, was extremely anxious to get taken on board the gun-boat, and wished the persons he made the communication to, to assist him and see Captain Bullock on his behalf. He has, I understand, been removed to a school in London. With reference to his statement, I may observe that Captain Hammer referred to is a South Carolinian, has been for many years in Fraser, Trenholm & Co.'s employ, is greatly trusted by them, and is also intimate with Captain Bullock, so that he would be likely to be well informed on the subject; and as he had no notion

[1] Appendix, vol. i, p. 185.

at that time of returning to Liverpool, he would have no hesitation in speaking of the matter to his officers and the persons from the Sumter. I may also state that Captain Bullock referred to is in Liverpool; that he is an officer of the confederate navy; that he was sent over here for the express purpose of fitting out privateers and sending over munitions of war; that he transacts his business at the office of Frazer, Trenholm & Co.; that he has been all the time in communication with Fawcett, Preston & Co., who fitted out the Oreto, and with Lairds, who are fitting out this vessel; that he goes almost daily on board the gun-boat, and seems to be recognized as in authority.

A Mr. Blair, of Paradise street, in this town, who furnished the cabins of the Laird gun-boat, has also stated that all the fittings and furniture were selected by Captain Bullock, and were subject to his approval, although paid for by Mr. Laird.

The information on which I have formed an undoubting conviction that this vessel is being fitted out for the so-called confederate government, and is intended to cruise against the commerce of the United States, has come to me from a variety of sources, and I have detailed it to you as far as practicable. I have given you the names of persons making the statements; but as the information in most cases is given to me by persons out of friendly feeling to the United States, and in strict confidence, I cannot state the names of my informants; but what I have stated is of such a character that little inquiry will confirm its truth.

Everything about the vessel shows her to be a war-vessel; she has well-constructed magazines; she has a number of canisters, of a peculiar and expensive construction, for containing powder; she has platforms, already screwed to her decks, for the reception of swivel-guns. Indeed, the fact that she is a war-vessel is not denied by Messrs. Laird; but they say she is for the Spanish government. This they stated on the 3d of April last, when General Burgoyne visited their yard, and was shown over it and the various vessels being built there by Messrs. John Laird, jr., and Henry H. Laird, as was fully reported in the papers at the time.

Seeing the statement, and having been already informed from so many respectable sources that she was for the so-called confederate government, I at once wrote to the minister in London to ascertain from the Spanish embassy whether the statement was true. The reply was a positive assurance that she was not for the Spanish government. I am therefore authorized in saying that what was stated on that occasion, as well as statements since made that she is for the Spanish government, are untrue.

I am satisfied beyond a doubt that she is for a confederate war-vessel.

If you desire any personal explanation or information, I shall be happy to attend you whenever you may request it.

I am, &c.,
(Signed) THOMAS H. DUDLEY.

The statement in the above letter that the Florida was receiving armament at Nassau was erroneous. The Florida, as has been already shown, did not receive any armament at Nassau.

To this letter the collector replied as follows:[1]

The collector of customs, Liverpool, to the United States consul.

LIVERPOOL, *July* 10, 1862.

SIR: I beg to acknowledge the receipt of your communications of yesterday's date, (received this morning,) and to acquaint you that I shall immediately submit the same for the consideration and direction of the board of customs, under whom I have the honor to serve. I may observe, however, that I am respectfully of opinion the statement made by you is not such as could be acted upon by the officers of this revenue, unless legally substantiated by evidence.

I have, &c.,
(Signed) S. PRICE EDWARDS.

A copy of Mr. Dudley's letter of the 9th July was on the 10th July transmitted by the collector to the commissioners of customs, together with the following report from the surveyor of customs:[2]

[86] ** Surveyor's report.*

SURVEYOR'S OFFICE, *July* 10, 1862.

SIR: I beg to report that, agreeably with your directions, I have this day inspected the steamer lying at the building-yard of the Messrs. Laird, at Birkenhead, and find

[1] Appendix, vol. i, p. 186. [2] Ibid., p. 185.

that she is in the same state, as regards her armament, as on the date of my former report.

She has no guns or carriages on board, nor are her platforms fitted to the deck.

Very respectfully,
(Signed) E. MORGAN.

The papers transmitted by the collector as aforesaid were referred by the commissioners of customs to the solicitor to the customs, who is the official adviser of the department on matters of law; and he, on the 11th July, 1862, reported as follows:[1]

Report from the solicitor to the customs.

There is only one proper way of looking at this question. If the collector of customs were to detain the vessel in question, he would no doubt have to maintain the seizure by legal evidence in a court of law, and to pay damages and costs in case of failure. Upon carefully reading the statement I find the greater part, if not all, is hearsay and inadmissible, and as to a part the witnesses are not forthcoming or even to be named. It is perfectly clear to my mind that there is nothing in it amounting to *prima facie* proof sufficient to justify a seizure, much less to support it in a court of law, and the consul could not expect the collector to take upon himself such a risk in opposition to rules and principles by which the Crown is governed in matters of this nature.

(Signed) F. J. HAMEL.
JULY 11, 1862.

The commissioners of customs accordingly wrote to the collector as follows:[1]

The commissioners of customs to the collector at Liverpool.

CUSTOM-HOUSE, *London, July* 15, 1862.

SIR: Having considered your report of the 10th instant, inclosing a communication which you had received from Mr. T. H. Dudley, American consul at Liverpool, apprising you of certain circumstances relative to a vessel which he states is now being fitted out by Messrs. Laird, at Birkenhead, as a gun-boat for the so-called confederate government of the Southern States of America, and intended to be used as a privateer against the United States, and having communicated with our solicitor on the subject—

We acquaint you that there does not appear to be *prima facie* proof sufficient in the statement of the consul to justify the seizure of the vessel, and you are to apprise the consul accordingly.

We transmit, for your information, a copy of the report of our solicitor on the matter, dated the 11th instant.

(Signed) FREDERICK GOULBURN.
R. W. GREY.

Copies of the above papers were, on the 17th July, sent by the commissioners of customs to the treasury for the information of the lords commissioners of the treasury.

Up to this point the information which was in the possession of Her Majesty's government respecting the vessel consisted chiefly, and almost entirely, of hearsay statements, made by persons who could not be produced, as to alleged admissions by other persons who were represented to be either concerned in her equipment or identified in interest with the Confederate States, and whom, according to the rules of English legal procedure, Her Majesty's government could not compel to give similar admissions or evidence. It was, however, apparent that she was intended for war; and there was some (though very slight) evidence tending to connect her with persons who were believed or known to be partisans or agents of the government of the Confederate States. Mr. Dudley admitted, at the same time, that he could not give the names of

[1] Appendix, vol. i, p. 187.

his informants. The Captain Bullock mentioned above was, in fact, (as Her Majesty's government believes,) an officer and agent of the government of the Confederate States, but Her Majesty's government had at that time no means of proving him to be such.

On the 22d July, 1862, the commissioners of customs received from the collector at Liverpool the following letter:[1]

[87] *The collector of customs, Liverpool, to the commissioners of customs.*

LIVERPOOL, *July* 21, 1862.

HONORABLE SIRS: The United States consul, accompanied by his solicitor, Mr. Squarey, has just been here with the witnesses whose affidavits are inclosed, requesting me to seize the gun-boat alluded to in your honors' order of the 15th instant, upon the evidence adduced to him that the gun-boat has been fitted out by Messrs. Laird, of Birkenhead, for the confederate government of the Southern States.

The only evidence of importance, as appears to me, is that of William Passmore, who had engaged himself as a sailor to serve in the vessel.

I shall be obliged by the board being pleased to instruct me by telegraph how I am to act, as the ship appears to be ready for sea, and may leave any hour she pleases.

Respectfully,
(Signed) S. PRICE EDWARDS.

P. S.—Nothing has been done to her since my first representation, nor has anything besides coals been placed in her.

S. P. E.

Inclosed in this letter were copies of six sworn depositions, which were as follows:

DEPOSITIONS.

1.

I, William Passmore, of Birkenhead, in the county of Chester, mariner, make oath and say as follows:

1. I am a seaman, and have served as such on board Her Majesty's ship Terrible during the Crimean war.

2. Having been informed that hands were wanted for a fighting-vessel built by Messrs. Laird & Co., of Birkenhead, I applied on Saturday, which was, I believe, the 21st day of June last, to Captain Butcher, who, I was informed, was engaging men for the said vessel, for a berth on board her.

3. Captain Butcher asked me if I knew where the vessel was going, in reply to which I told him I did not rightly understand about it. He then told me the vessel was going out to the government of the Confederate States of America. I asked him if there would be any fighting, to which he replied, yes, they were going to fight for the southern government. I told him I had been used to fighting-vessels, and showed him my papers. I asked him to make me signalman on board the vessel, and, in reply, he said that no articles would be signed until the vessel got outside, but he would make me signalman if they required one when they got outside.

4. The said Captain Butcher then engaged me as an able seaman on board the said vessel, at the wages of £4 10s. per month, and it was arranged that I should join the ship in Messrs. Laird & Co.'s yard on the following Monday. To enable me to get on board Captain Butcher gave me a password, the number "290."

5. On the following Monday, which was, I believe, the 23d of June last, I joined the said vessel in Messrs. Laird & Co.'s yard, at Birkenhead, and I remained by her till Saturday last.

6. The said vessel is a screw-steamer of about 1 100 tons burden, as far as I can judge, and is built and fitted up as a fighting-ship in all respects; she has a magazine and shot and canister racks on deck, and is pierced for guns, the sockets for the bolts of which are laid down. The said vessel has a large quantity of stores and provisions on board, and she is now lying at the Victoria wharf in the great float at Birkenhead, where she has taken in about 300 tons of coal.

7. There are now about thirty hands on board her, who have been engaged to go out in her; most of them are men who have previously served on board fighting-ships, and one of them is a man who served on board the confederate steamer Sumter. It is well known by the hands on board that the vessel is going out as a privateer for

[1] Appendix, vol. i, p. 188.

the confederate government, to act against the United States, under a commission from Mr. Jefferson Davis. Three of the crew are, I believe, engineers; and there are also some firemen on board.

8. Captain Butcher and another gentleman have been on board the ship almost every day. It is reported on board the ship that Captain Butcher is to be the sailing-master, and that the other gentleman, whose name I believe is Bullock, is to be the fighting captain.

9. To the best of my information and belief, the above-mentioned vessel, which I have heard is to be called the Florida, is being equipped and fitted out in order that she may be employed in the service of the confederate government in America, to cruise and to commit hostilities against the Government and people of the United States of America.

(Signed) WILLIAM PASSMORE.

Sworn before me at the custom-house, Liverpool, this 21st day of July, 1862.

(Signed) S. PRICE EDWARDS, *Collector*.

2.

I, John de Costa, of No. 8 Waterloo Road, Liverpool, shipping-master, make oath and say as follows:

1. I know, and have for several months known, by sight, Captain Bullock, who is very generally known in Liverpool as an agent or commissioner of the Confederate States in America.

[88] *2. In the month of March last I saw the screw-steamer Annie Childs, which had run the blockade from Charleston, enter the river Mersey. She came up the Mersey with the confederate flag flying at her peak; and I saw the Oreto, a new gun-boat which had been recently built by Messrs. W. C. Miller & Sons, and which was then lying at anchor in the river off Egremont, dip her colors three times in acknowledgment of the Annie Childs, which vessel returned the compliment, and a boat was immediately afterward dispatched from the Annie Childs to the Oreto, with several persons on board, besides the men who were at the oars.

3. On the 22d day of March last I was on the north landing-stage between 7 and 8 o'clock in the morning; I saw the said Captain Bullock go on board a tender, which afterwards took him off to the said gun-boat Oreto, which was then lying in the Sloyne. Just before he got on board the tender he shook hands with a gentleman who was with him, and said to him, "This day six weeks you will get a letter from me from Charleston," or words to that effect.

4. On the same day, between 11 and 12 o'clock, as well as I can remember, I saw the Oreto go to sea. She came well in on the Liverpool side of the river, and from the Princess Pier head, where I was standing, I distinctly saw the said Captain Bullock on board her, with a person who had been previously pointed out to me by a fireman who came to Liverpool in the Annie Childs as a Charleston pilot, who had come over in the Annie Childs with Captain Bullock to take the gun-boat out.

(Signed) JOHN DE COSTA.

Sworn before me at the custom-house, Liverpool, this 21st day of July, 1862.

(Signed) S. PRICE EDWARDS, *Collector*.

3.

I, Allen Stanley Clare, of Liverpool, in the county of Lancaster, articled clerk, make oath and say as follows:

1. On the 21st day of July, now instant, I examined the book at the Birkenhead dockmaster's office, at Birkenhead, containing a list of all vessels which enter the Birkenhead docks; and I found in such book an entry of a vessel described as No. 290, and from the entries in the said book, in reference to such vessel, it appears that she is a screw-steamer, and that her registered tonnage is 500 tons, and that Matthew J. Butcher is her master.

(Signed) ALLEN S. CLARE.

Sworn before me at the custom-house, Liverpool, this 21st day of July, 1862.

(Signed) S. PRICE EDWARDS, *Collector*.

4.

We, Henry Wilding, of Liverpool, in the county of Lancaster, gentleman, and Matthew Maguire, of Liverpool, aforesaid, agent, make oath and say as follows:

1. I, the said Matthew Maguire, for myself, say that on the 15th day of July, now instant, I took Richard Brogan, whom I know to be an apprentice working in the shipbuilding yard of Messrs. Laird & Co., at Birkenhead, to the above-named deponent, Henry Wilding, at his residence at New Brighton.

2. And I, the said Henry Wilding, for myself, say as follows: I am the vice-consul of the United States of North America at Liverpool.

3. On the 15th day of July, now instant, I saw the said Richard Brogan and examined him in reference to a gun-boat which I had heard was being built by the said Messrs. Laird & Co. for the so-called confederate government, and the said Richard Brogan then informed me that the said vessel was built to carry four guns on each side and four swivel-guns; that Captain Bullock had at one time, when the vessel was in progress, come to the yard almost every day to select the timber to be used for the vessel. That the said Captain Bullock was to be the captain of the said vessel; and that the said Captain Bullock had asked the said Richard Brogan to go as carpenter's mate in the said vessel for three years, which the said Richard Brogan had declined to do, because Mr. Laird, who was present at the time, would not guarantee his wages. That the said vessel was to carry 120 men, and that 30 able seamen were already engaged for her. That the petty officers for the said vessel were to be engaged for three years, and the seamen for five months. That the said vessel was then at the end of the new warehouses in the Birkenhead dock, and that it was understood she was to take her guns on board at Messrs. Laird & Co.'s shed, further up the dock; and that it was generally understood by the men in Messrs. Laird & Co.'s yard that the said vessel was being built for the confederate government.

4. The vessel above mentioned is the same which is now known as No. 290, and I verily believe that the said vessel is, in fact, intended to be used as a privateer or vessel of war, under a commission from the so-called confederate government, against the United States Government.

(Signed) H. WILDING.
MATTHEW MAGUIRE.

Sworn before me at the custom-house, Liverpool, this 21st day of July, 1862.
(Signed) S. PRICE EDWARDS, *Collector.*

5.

I, Thomas Haines Dudley, of No. 3 Wellesley Terrace, Prince's Park, in the borough of Liverpool, in the county of Lancaster, esq., being one of the people called Quakers, affirm and say as follows:

[*9] *I am the consul of the United States of North America for the port of Liverpool and its dependencies.

2. In the month of July, in the year 1861, information was sent by the United States Government to the United States consulate at Liverpool, that a Mr. James D. Bullock, of Savannah, in the State of Georgia, who was formerly the master of an American steamer called the Cahawba, was reported to have left the United States for England, taking with him a credit for a large sum of money, to be employed in fitting out privateers, and also several commissions issued by the Southern Confederate States for such privateers, and in the month of August, in the year 1861, information was sent by the United States Government to the United States consulate at Liverpool that the said Captain Bullock was then residing near Liverpool and acting as the agent of the said Confederate States in Liverpool and London.

3. In accordance with instructions received from the Government of the United States, steps have been taken to obtain information as to the proceedings and movements of the said James D. Bullock, and I have ascertained the following circumstances, all of which I verily believe to be true, viz, that the said James D. Bullock is in constant communication with parties in Liverpool who are known to be connected with and acting for the parties who have assumed the government of the Confederate States. That the said James D. Bullock, after remaining for some time in England, left the country, and after an absence of several weeks, returned to Liverpool in the month of March last, from Charleston, in the State of South Carolina, one of the seceded States, in a screw-steamer then called the Annie Childs, which had broken the blockade of the port of Charleston then and now maintained by the United States Navy, and which vessel, the Annie Childs, carried the flag of the Confederate States as she came up the Mersey. That shortly after the arrival of the said James D. Bullock at Liverpool in the Annie Childs, as above mentioned, he again sailed from Liverpool in a new gun-boat called the Oreto, built at Liverpool, by Messrs. W. C. Miller & Sons, ship-builders, and completed in the early part of the present year, and which gun-boat, the Oreto, though she cleared from Liverpool for Palermo and Jamaica, in reality never went to those places, but proceeded to Nassau, New Providence, to take on board guns and arms with a view to her being used as a privateer or vessel of war under a commission from the so-called confederate government against the Government of the United States, and which said vessel, the Oreto, is stated to have been lately seized at Nassau by the commander of Her Majesty's ship Greyhound. That the said James D. Bullock has since returned again to Liverpool, and that before he left Liverpool, and since he returned, he has taken an active part in superintending the building, equipment, and fitting out of another steam gun-boat, known as No. 290, which has lately been launched by

Messrs. Laird & Co. of Birkenhead, and which is now lying, as I am informed and believe, ready for sea in the Birkenhead docks, with a large quantity of provisions and stores and thirty men on board. That the said James D. Bullock is going out in the said gun-boat No. 290, which is nominally commanded by one Matthew S. Butcher, who, I am informed, is well acquainted with the navigation of the American coast, having formerly been engaged in the coasting-trade between New York, Charleston, and Nassau.

4. From the circumstances which have come to my knowledge I verily believe that the said gun-boat No. 290 is being equipped and fitted out as a privateer or vessel of war to serve under a commission to be issued by the government of the so-called Confederate States, and that the said vessel will be employed in the service of the said Confederate States to cruise and commit hostilities against the Government and people of the United States of North America.

(Signed) THOMAS H. DUDLEY.

Affirmed and taken before me at the custom-house, Liverpool, this 21st day of July, 1862.

(Signed) S. PRICE EDWARDS,
Collector.

6.

I, Matthew Maguire, of Liverpool, agent, make oath and say as follows:

1. I know Captain J. D. Bullock, who is commonly reputed to be the agent or commissioner of the Confederate States of America at Liverpool.

2. I have seen the said J. D. Bullock several times at the yard of Messrs. Laird & Co. at Birkenhead, where a gun-boat known as No. 290 has lately been built, while the building of the said vessel has been going on.

3. On the 2d day of July now instant, I saw the said J. D. Bullock on board the said vessel in Messrs. Laird & Co.'s yard; he appeared to be giving orders to the workmen who were employed about such vessel.

(Signed) MATTHEW MAGUIRE.

Sworn before me at the custom-house, Liverpool, this 21st day of July, 1862.

(Signed) S. PRICE EDWARDS,
Collector.

The above depositions were referred, as soon as they were received, to the assistant solicitor and solicitor of customs, who on the same day reported as follows:[1]

[90] * *Reports of the assistant solicitor and solicitor of customs, referred to in the preceding letter.*

In my opinion there is not sufficient evidence in this case to justify the detention of the vessel, under the 59th George III, c. 69. The only affidavit that professes to give anything like positive evidence is that of the seaman Passmore; but, assuming all he states to be true, what occurred between the reputed master (Butcher) and himself would not warrant a detention under section 6, nor support an information for the penalty under that section. Nor do I think, however probable it may seem that the vessel is fitted out for the military operations mentioned, that sufficient evidence has been adduced to entitle the applicants to the interference of the collector of customs at Liverpool. The only justifiable grounds of seizure under section 7 of the act would be the production of such evidence of the fact as would support an indictment for the misdemeanor under that section.

(Signed) J. O'DOWD.

CUSTOMS, *July* 22, 1862.

I entirely concur with Mr. O'Dowd in opinion that there is not sufficient evidence to warrant the seizure or detention of the ship by the officers of customs. There appears to be some evidence of enlistment of individuals, and if that were sufficient to satisfy a court, they would be liable to pecuniary penalties, for security of which, if recovered, the customs might detain the ship until those penalties were satisfied, or good bail given; but there is not evidence enough of enlistment to call upon the customs to prosecute. The United States consul or any other person may do so at their own risk, if they see fit.

(Signed) F. J. HAMEL.

JULY 22, 1862.

[1] Appendix, vol. i, p. 192.

In accordance with these reports the commissioners of customs, on the same 22d July, 1862, wrote to the collector as follows:[1]

The commissioners of customs to the collector of customs, Liverpool.

LONDON, *July* 22, 1862.

SIR: Having considered your report of the 21st instant, stating with reference to previous correspondence which has taken place on the subject of a gun-boat which is being fitted out by Messrs. Laird, of Birkenhead, that the United States consul, accompanied by his solicitor, has attended at the custom-house with certain witnesses, whose affidavits you have taken and have submitted for our consideration, and has requested that the vessel may be seized, under the provisions of the foreign-enlistment act, upon the ground that the evidence adduced affords proof that she is being fitted out for the government of the Confederate States of America—

We acquaint you that we have communicated with our solicitor on the subject, who has advised us that the evidence submitted is not sufficient to justify any steps being taken against the vessel under either the sixth or seventh section of act 59 George III, cap. 69, and you are to govern yourself accordingly.

The solicitor has, however, stated that if there should be sufficient evidence to satisfy a court of enlistment of individuals, they would be liable to pecuniary penalties, for security of which, if recovered, this department might detain the ship until those penalties are satisfied, or good bail given; but there is not sufficient evidence to require the customs to prosecute; it is, however, competent for the United States consul or any other person to do so at their own risk, if they see fit.

(Signed) T. F. FREMANTLE,
G. C. L. BERKELEY.

On the same day, the papers were transmitted by order of the commissioners of customs to the treasury, with a covering letter, which was as follows:[2]

Mr. Gardner to Mr. Hamilton.

CUSTOM-HOUSE, *July* 22, 1862.

SIR: With reference to the report of this board of the 1st instant, respecting a vessel fitting out at Liverpool, which it is stated is intended to be used as a privateer by the so-called Confederate States of America—

I am directed to state that the board have this day received a report from their collector at Liverpool, inclosing affidavits which have been made before him with a view to the detention of the vessel; and in transmitting to you, by desire of the board, the accompanying copy of the collector's report, with the affidavits referred to, I am to state that the board having communicated with their solicitor, are advised that the evidence is not sufficient to justify any steps being taken against the vessel under either the sixth or seventh section of the act 59 George III, cap. 69, and they have apprised the collector at Liverpool accordingly, informing him at the same time that the solicitor has also stated that if there should be sufficient evidence to satisfy a court of the enlistment of individuals, they would be liable to pecuniary penalties, for security of which, if recovered, the customs might detain the ship until those penalties are satisfied, or good bail given; but that there is not evidence enough of enlistment to call upon the customs to prosecute, although the United States consul, or any other person, may do so at their own risk, if they see fit.

[91] *I am, however, to submit, should the lords commissioners of Her Majesty's treasury have any doubt upon the subject, whether it may not be advisable that the opinion of the law-officers of the Crown should be taken.

I am, &c.,
(Signed) J. G. GARDNER.

The secretary to the treasury, on receiving the papers, sent them immediately to Mr. Layard, one of the under-secretaries of state for the foreign department, with an unofficial letter, which was as follows:[2]

Mr. Hamilton to Mr. Layard.

TREASURY, *July* 22, 1862.

MY DEAR MR. LAYARD: As the communication may be considered pressing, I send it to you unofficially to save time. Perhaps you will ascertain from Lord Russell whether

[1] Appendix, vol. i, p. 192. [2] Ibid, p. 188.

it is his wish that we should take the opinion of the law-officers as to the case of this vessel. It is stated that she is nearly ready for sea.

Sincerely yours,
(Signed) GEO. A. HAMILTON.

The papers thus sent were received at the foreign office on the 23d July, 1862, and were, on the same day, referred to the law-officers of the Crown, with the following letter:[1]

Mr. Layard to the law-officers of the Crown.

[Immediate.] FOREIGN OFFICE, *July* 23, 1862.

GENTLEMEN: With reference to your report of the 30th ultimo, I am directed by Earl Russell to transmit to you the accompanying papers, which have been received by the board of treasury from the commissioners of customs, containing further information respecting the vessel alleged to be fitting out at Liverpool for the service of the so-called Confederate States; and I am to request that you will take the same into your consideration, and favor Lord Russell at your earliest convenience with your opinion thereupon.

The former papers on this subject are inclosed for reference if required.

I am, &c.,
(Signed) A. H. LAYARD.

It will have been seen from the above statement that the evidence laid by Mr. Dudley before the collector of customs at Liverpool on the 21st July was on the same day sent to London, on the following day (the 22d) referred to the official advisers of the customs department and reported on by them, and on the 23d referred to the law-officers of the Crown.

Of the six depositions one only (that of Passmore) contained any evidence which was at once material to the question and legally admissible. To rely on evidence of this kind proceeding from a single witness, without more corroboration or without inquiry into his antecedents, would, according to English judicial experience, have been very unsafe in a case of this nature. Of the contents of the five others the greater part was merely hearsay and not admissible as evidence; and they furnish grounds of suspicion, but not sufficient grounds for belief.

Copies of the depositions were also, on the 22d, sent by Mr. Adams to Earl Russell, with the following note:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, July 22, 1862.

MY LORD: I have the honor to transmit copies of six depositions taken at Liverpool, tending to establish the character and destination of the vessel to which I called your lordship's attention in my note of the 23d of June last.

The originals of these papers have already been submitted to the collector of the customs at that port, in accordance with the suggestions made in your lordship's note to me of the 4th of July, as the basis of an application to him to act under the powers conferred by the enlistment act. But I feel it to be my duty further to communicate the facts as there alleged to Her Majesty's government, and to request that such further proceedings may be had as may carry into full effect the determination which I doubt not it ever entertains to prevent, by all lawful means, the fitting out of hostile expeditions against the government of a country with which it is at peace.

I avail, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[92] On the 23d July two additional depositions were sent by Mr. A. T Squarey, of *Liverpool, a solicitor employed by Mr. Dudley, to the board of customs, with the following letter:[2]

[1] Appendix, vol. i, p. 193. [2] Ibid., p. 194.

Mr. Squarey to Mr. Gardner.

TAVISTOCK HOTEL, COVENT GARDEN,
London, July 23, 1862.

SIR: Referring to an application which I made on behalf of the United States Government, under the instructions of their consul at Liverpool, to the collector of customs at Liverpool, on Monday last, for the detention, under the provisions of the act 59 George III, cap. 69, of a steam gun-boat built by Messrs. Laird & Co., at Birkenhead, and which there is no doubt is intended for the Confederate States, to be used as a vessel of war against the United States Government, I beg now to inclose two affidavits which reached me this morning from Liverpool; one made by Robert John Taylor, and the other by Edward Roberts, and which furnish additional proof of the character of the vessel in question.

I also inclose a case which has been submitted to Mr. Collier, Q. C., with his opinion thereon. I learnt this morning from Mr. O'Dowd that instructions were forwarded yesterday to the collector at Liverpool not to exercise the powers of the act in this instance, it being considered that the facts disclosed in the affidavits made before him were not sufficient to justify the collector in seizing the vessel. On behalf of the Government of the United States I now respectfully request that this matter, which I need not point out to you involves consequences of the gravest possible description, may be considered by the board of customs on the further evidence now adduced. The gun-boat now lies in the Birkenhead docks, ready for sea in all respects, with a crew of fifty men on board; she may sail at any time, and I trust that the urgency of the case will excuse the course I have adopted of sending these papers direct to the board instead of transmitting them through the collector at Liverpool, and the request which I now venture to make, that the matter may receive immediate attention.

I have, &c.,
(Signed) A. T. SQUAREY.

The two additional depositions were as follows:

DEPOSITIONS.

1.

I, Edward Roberts, of No. 6 Vere street, Toxteth Park, in the county of Lancaster, ship-carpenter, make oath and say as follows:

1. I am a ship-carpenter, and have been at sea for about four years in that capacity.

2. About the beginning of June last I had been out of employ for about two months, and hearing that there was a vessel in Messrs. Laird & Co.'s yard fitting out to run the blockade, I applied to Mr. Barnett, shipping-master, to get me shipped on board the said vessel.

3. On Thursday, the 19th day of June last, I went to the said Mr. Barnett's office, No. 11 Hanover street, Liverpool, in the county of Lancaster, and was engaged for the said vessel as carpenter's mate. By the direction of the said Mr. Barnett I met Captain Butcher the same day on the George's landing-stage, and followed him to Messrs. Laird & Co.'s ship-building yard, and on board a vessel lying there. The said Captain Butcher spoke to the boatswain about me, and I received my orders from the said boatswain. At dinner-time the said day, as I left the yard, the gate-man asked me if I was "going to work on that gun-boat;" to which I replied, "Yes."

4. The said vessel is now lying in the Birkenhead float, and is known by the name No. 290. The said vessel has coal and stores on board. The said vessel is pierced for guns, I think four on a side, and a swivel-gun. The said vessel is fitted with shot and canister racks, and has a magazine. There are about fifty men, all told, now on board the said vessel. It is generally understood on board of the said vessel that she is going to Nassau for the southern government.

5. I know Captain Bullock by sight, and have seen him on board of the said vessel five or six times; I have seen him go round the said vessel with Captain Butcher. I understood, both at Messrs. Laird & Co.'s yard and also on board the said vessel, that the said Captain Bullock was the owner of the said vessel.

6. I have been working on board the said vessel from the 19th day of June last up to the present time, with wages at the rate of £6 per month, payable weekly. I have signed no articles of agreement. The talk on board is that an agreement will be signed before sailing.

(Signed) EDWARD ROBERTS.

Sworn at Liverpool, in the county of Lancaster, this 22d day of July, 1862, before me,
(Signed) WM. BROWN,
Justice of the Peace for Lancashire and Liverpool.

2.

I, Robert John Taylor, of Mobile, but at present remaining temporarily at Liverpool, mariner, make oath and say as follows:

1. I am a native of London, and 41 years of age. From fourteen years upward I have followed the sea. During the last fifteen years I have been living in the Con-
[93] federate States of America, *principally at Savannah and Mobile, and since the secession movement I have been engaged in running the blockade. I have run the blockade six times and been captured once.

2. The vessels in which I have been engaged in running the blockade have sailed from Mobile, and have gone to Havana and New Orleans. I am well acquainted with the whole of the coast of the Confederate States, as I have been principally engaged since 1847 in trading to and from the Gulf ports.

3. I came to England after my release from Fort Warren, on the 29th of May last. I came here with the intention of going to the Southern States, as I could not get there from Boston.

4. Mr. Rickarby, of Liverpool, a brother of the owner, at Mobile, of the vessel in which I was captured when attempting to run the blockade, gave me instructions to go to Captain Butcher, at Laird's yard, Birkenhead. I had previously called on Mr. Rickarby, and told him that I wanted to go South, as the Northerners had robbed me of my clothes when I was captured, and I wanted to have satisfaction.

5. I first saw Captain Butcher at one of Mr. Laird's offices last Thursday fortnight, (namely, the 3d of July last.) I told him that I had been sent by Mr. Rickarby, and asked him if he were the captain of the vessel which was lying in the dock. I told him that I was one of the men that had been captured in one of Mr. Rickarby's vessels, and that I wanted to get South in order to have retaliation of the Northerners for robbing me of my clothes. He said that if I went with him in his vessel I should very shortly have that opportunity.

6. Captain Butcher asked me at the interview if I was well acquainted with the Gulf ports, and I told him I was. I asked him what port he was going to, and he replied that he could not tell me then, but that there would be an agreement made before we left for sea. I inquired as to the rate of wages, and I was to get £4 10s. per month, payable weekly.

7. I then inquired if I might consider myself engaged, and he replied, yes, and that I might go on board the next day, which I accordingly did; and I have been working on board up to last Saturday night.

8. I was at the siege of Acre in 1840, in Her Majesty's frigate Pique, Captain Edward Boxer, and served on board for nine months. Captain Butcher's ship is pierced for eight broadside guns and four swivels or long-toms. Her magazine is complete, and she is fitted up in all respects as a man-of-war, without her ammunition. She is now chock-full of coals, and has, in addition to those in the hold, some thirty tons on deck.

9. One day, whilst engaged in heaving up some of the machinery, we were singing a song, as seamen generally do, when the boatswain told us to stop that, as the ship was not a merchant-ship but a man-of-war.

(Signed) ROBERT JOHN TAYLOR.

Sworn at Liverpool, in the county of Lancaster, this 22d day of July, 1862, before me.

(Signed) W. J. LAMPORT,
Justice of the Peace for Liverpool.

The case and opinion which, together with the additional depositions, were mentioned and inclosed in Mr. Squarey's letter, were as follows:[1]

Case submitted to Mr. Collier, Q. C., and his opinion thereon.

You will receive, herewith, copies of the following affidavits in reference to a gunboat known as No. 290, which was built by Messrs. Laird & Co. at Birkenhead, as it is believed, for the Confederate States of America, and which is now lying ready for sea in all respects in the Birkenhead docks: No. 1. Affirmation of T. H. Dudley; No. 2. Affidavit of J. de Costa; No. 3. Affidavit of Mr. Maguire; No. 4. Affidavit of H. Wilding and M. Maguire; No. 5. Affidavit of A. S. Clare; No. 6. Affidavit of William Passmore; No. 7. Affidavit of Edward Roberts; No. 8. Affidavit of Robert John Taylor. An application has been made, on the affidavits Nos. 1 to 6 inclusive, to the collector of customs at Liverpool, to detain the vessel under the provisions of the act 59 Geo. III, cap. 69; but, under the advice of the solicitors to the customs, the board have declined to sanction the detention of the vessel.

[1] Appendix, vol. i, p. 196.

You are requested to advise the consul for the United States at Liverpool whether the affidavits now submitted to you would disclose facts which would justify the collector of customs in detaining the vessel under the act in question.

JULY 23, 1862.

Opinion.

I have perused the above affidavits, and I am of opinion that the collector of customs would be justified in detaining the vessel. Indeed, I should think it his duty to detain her; and that if, after the application which has been made to him, supported by the evidence which has been laid before me, he allows the vessel to leave Liverpool, he will incur a heavy responsibility, a responsibility of which the board of customs, under whose directions he appears to be acting, must take their share.

It appears difficult to make out a stronger case of infringement of the foreign-enlistment act, which, if not enforced on this occasion, is little better than a dead letter.

It well deserves consideration whether, if the vessel be allowed to escape, the Federal Government would not have serious grounds of remonstrance.

(Signed) R. P. COLLIER.

TEMPLE, *July* 23, 1862.

[94] *The case and opinion, together with the additional depositions, were referred to the assistant solicitor of customs, who on the same day reported as follows:[1]

I have read the additional evidence, and I do not think that it materially strengthens the case of the applicants. As regards the opinion of Mr. Collier, I cannot concur in his views; but, adverting to the high character which he bears in his profession, I submit that the board might act judiciously in recommending the lords of the treasury to take the opinion of the law-officers of the Crown.

(Signed) J. O'DOWD.

JULY 23, 1862.

Mr. Squarey's letter, with the additional depositions and the case and opinion, were on the same 23d July sent by the board of customs to the treasury with a suggestion that the opinion of the law-officers of the Crown should be taken on the matter. As soon as received at the treasury they were sent unofficially to Mr. Layard, who was at the time in the House of Commons. Mr. Layard, after communicating with Earl Russell, sent them at once, by his (Earl Russell's) instructions, to the law-officers of the Crown, with the following letter:[1]

Mr. Layard to the law-officers of the Crown.

FOREIGN OFFICE, *July* 23, 1862.

GENTLEMEN: With reference to my letter of this morning, sending to you papers respecting the vessel stated to be preparing for sea at Birkenhead for the service of the government of the so-styled Confederate States of North America, I am directed by Earl Russell to transmit to you a further letter from the commissioners of customs, inclosing additional papers respecting this vessel; and I am to request that you will take these papers into your consideration, and favor Lord Russell at your earliest convenience with your opinion as to the steps which ought to be taken by Her Majesty's government in the matter.

I am, &c.,

(Signed) A. H. LAYARD.

Copies of the papers sent by Mr. Squarey were on the 26th July received by Earl Russell from Mr. Adams, together with the following letter:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, July 24, 1862.

MY LORD: In order that I may complete the evidence in the case of the vessel now fitting out at Liverpool, I have the honor to submit to your lordship's consideration the copies of two more depositions taken respecting that subject.

[1] Appendix, vol. i, p. 197.

In the view which I have taken of this extraordinary proceeding as a violation of the enlistment act, I am happy to find myself sustained by the opinion of an eminent lawyer of Great Britain, a copy of which I do myself the honor likewise to transmit.

Renewing, &c.,

(Signed) CHARLES FRANCIS ADAMS.

On the 25th July a further deposition was received by the board of customs from Mr. Squarey, referred to the assistant solicitor of customs, and transmitted to the treasury; from whence on Saturday, the 26th of July, it was sent to the foreign office, and was on the same day referred to the law-officers of the Crown, with a request that they would take it into consideration, together with the other papers then before them relating to the same subject.

This further deposition was as follows:[1]

Affidavit of Henry Redden.

I, Henry Redden, of Hook street, Liverpool, in the county of Lancaster, seaman, make oath and say as follows:

1. I am a seaman, and have followed the sea for fifteen years. I have been boatswain on board both steamers and sailing-vessels, and belong to the naval reserve.

2. About six weeks ago I was engaged by Captain Butcher (with whom I have previously sailed) as boatswain on board a vessel then in Messrs. Laird & Co.'s shipbuilding yard, but now lying in the Birkenhead float, and known by the name No. 290. The said Captain Butcher offered me £10 per month, and said an agreement should be signed when we got outside. He told me that we should have plenty of money when we got home, as we were going to the Southern States on a speculation to try and get some.

[95] *3. The crew now on board the said vessel consists of about forty men, but I believe that she will take to sea about one hundred men, all told. It is generally understood on board that she will clear for Nassau, but not make that port. The said vessel has all her stores and coals on board ready for sea. She is fitted in all respects as a man-of-war, to carry six broadside-guns and four pivots, but has no guns or ammunition on board as yet. The rules on board are similar to those in use on a man-of-war, and the men are not allowed to sing as they do on a merchantman. The call is used on board. The said vessel is of about 1,100 tons burden.

4. I know Captain Bullock. He has been superintending the building of the said vessel in Messrs. Laird & Co.'s yard, and is, I believe, to take charge of the vessel when we get outside.

It is generally understood on board the said vessel that she belongs to the confederate government.

(Signed) HENRY REDDEN.

Sworn this 24th day of July, 1862, before me.

(Signed) JOHN STEWART,

A Justice of the Peace for the County of Lancaster.

On this deposition the assistant solicitor of customs had, on the 25th July, reported as follows:[1]

I submit a reference to my former reports, to the opinions expressed in which I feel still bound to adhere. So far from giving additional force to the application, the affidavit of Henry Redden appears to me to weaken it, as, after the lapse of several days since the date of the former affidavits, the applicants are confessedly unable to make out a better justification for detaining the vessel. It is, no doubt, difficult to procure satisfactory evidence in such a case; but, in the absence of at least a clear *prima facie* case, there cannot exist those grounds for detaining the vessel which the foreign-enlistment act contemplates.

(Signed) J. O'DOWD.

CUSTOMS, *July* 25, 1862.

From the above statement it will have been seen that the additional papers sent Mr. Squarey on the 23d were on the same day referred by the board of customs to their official adviser and reported on by him, and were also on the same day transmitted by the board, through the treasury, to the foreign office and thence referred to the law-officers of the Crown.

[1] Appendix, vol. i, p. 198.

It will have been seen, also, that the further deposition received on the 25th was on that day reported on by the official adviser of the board of customs, and was on the following day referred to the law-officers of the Crown.

On Tuesday, the 29th July, the law-officers of the Crown reported as follows on the papers which had been successively referred to them :[1]

The law-officers of the Crown to Earl Russell.

TEMPLE, *July* 29, 1862.

MY LORD: We are honored with your lordship's commands signified in Mr. Layard's letter of the 23d July instant, stating that, with reference to our report of the 30th ultimo, he was directed by your lordship to transmit to us the accompanying papers, which had been received by the board of treasury from the commissioners of customs, containing further information respecting the vessel alleged to be fitting out at Liverpool for the service of the so-called Confederate States, and to request that we would take the same into our consideration, and favor your lordship at our earliest convenience with our opinion thereupon.

The former papers on this subject were inclosed for reference if required.

We are also honored with your lordship's commands signified in Mr. Layard's letter of the 23d July instant, stating that, with reference to his letter of that date, sending to us papers respecting the vessel stated to be preparing for sea at Birkenhead, for the service of the government of the so-styled Confederate States of North America, he was directed by your lordship to transmit to us a further letter from the commissioners of customs, inclosing additional papers respecting this vessel, and to request that we would take these papers into our consideration, and favor your lordship at our earliest convenience with our opinion as to the steps which ought to be taken by Her Majesty's government in the matter.

We are further honored with your lordship's commands signified in Mr. Layard's letter of the ' July instant, stating that he was directed by your lordship to transmit to us the panying letter from the board of treasury, dated July 26, which your lordship ceived that morning, containing further information respecting the vessel stated to be fitting out at Liverpool for the service of the so-styled Confederate States, and to request that we would take the same into our consideration, together with the other papers on the same subject which were then before us.

[96] *In obedience to your lordship's commands we have taken these papers into consideration, and have the honor to report—

That, in our opinion, the evidence of the witnesses who have made depositions, (we allude particularly to William Passmore, Edward Roberts, Robert John Taylor, and Henry Redden,) coupled with the character and structure of the vessel, makes it reasonably clear that such vessel is intended for warlike use, against citizens of the United States, and in the interest of the (so-called) Confederate States. It is not, and cannot be, denied that the vessel is constructed and adapted as a vessel of war, being pierced for guns, the sockets for the bolts for which, Passmore states, are already laid down, and having a magazine, and shot and canister racks on the deck, and a certain number of canisters being actually on board. It is also stated in the report of the commissioners of customs of July 1, that Messrs. Laird, the builders, do not deny that the vessel has been built for some "foreign government," although they maintain apparently a strict reserve as to her actual destination, and as to the "foreign government" in particular, for whose service she is intended. We do not overlook the facts that neither guns nor ammunition have as yet been shipped; that the cargo (though of the nature of naval stores in connection with war-steamers) may yet be classed as a mercantile cargo; and that the crew do not appear to have been, in terms and form at least, recruited or enrolled as a military crew. It is to be expected that great stress will be laid upon these circumstances by the owners and others who may oppose the condemnation of the vessel if seized by the officers of the customs; and an argument may be raised as to the proper construction of the words which occur in the 7th section of the foreign-enlistment act, "Equip, furnish, fit out, or arm," which words, it may be suggested, point only to the rendering a vessel, whatever may be the character of its structure, presently fit to engage in hostilities. We think, however, that such a narrow construction ought not to be adopted, and, if allowed, would fritter away the act, and give impunity to open and flagrant violations of its provisions. We, therefore, recommend that, without loss of time, the vessel be seized by the proper authorities, after which an opportunity will be afforded to those interested, previous to condemnation, to alter the facts, if it may be, and to show an innocent destination of the ship.

[1] Appendix, vol. i, p. 200.

In the absence of any such countervailing case, it appears to us that the vessel, cargo, and stores may be properly condemned.

We have, &c.,
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

On the same 29th July the board of customs received from Mr. Dudley's solicitors a communication, dated the 28th, to the effect that they had every reason to believe that the vessel would sail on the 29th.[1] And soon afterward the board received from the same firm a telegraphic message stating that she had come out of dock the night before (the 28th) and had left the port that morning, (the 29th.)

On the 30th July the board of customs received from Mr. Dudley's solicitors the following letter, which was transmitted, through the treasury, to the foreign office:[2]

Messrs. Duncan, Squarey and Mackinnon to Mr. Gardner.

10 WATER STREET, LIVERPOOL, *July* 29, 1862.

SIR: We telegraphed you this morning that the above-named vessel was leaving Liverpool; she came out of dock last night, and steamed down the river between 10 and 11 a. m.

We have reason to believe that she is gone to Queenstown.

Yours, obediently,
(Signed) DUNCAN, SQUAREY AND MACKINNON.

On the 31st July orders were sent by the commissioners of customs to the collectors of customs at Liverpool and Cork, that the vessel should be seized if she should be within either of those ports. On the morning of the 1st August similar orders were sent to the collectors at Beaumaris and Holyhead.[3] Instructions were likewise sent to the governor of the Bahamas, that, if she should put in at Nassau, she should be detained.[2]

On the 30th July, the day after the departure of the vessel, Mr. Dudley wrote as follows to the collector of customs at Liverpool:[4]

Mr. Dudley to Mr. Edwards.

UNITED STATES CONSULATE,
Liverpool, July 30, 1862.

SIR: Referring to my previous communication to you on the subject of the gun-boat No. 290, fitted out by Messrs. Laird, of Birkenhead, I beg to inform you that she left the Birkenhead dock on Monday night; and yesterday morning left the river accompanied by the steam-tug Hercules.

The Hercules returned last evening, and her master states that the gun-boat was cruising off Point Lynas; that she had six guns on board, concealed below, and was taking powder from another vessel.

The Hercules is now alongside the Woodside landing-stage, taking on board men, (forty or fifty,) beams, evidently for gun-carriages, and other things, to convey down to the gun-boat. A quantity of cutlasses were taken on board on Friday last.

[97] *These circumstances all go to confirm the representations heretofore made to you about this vessel, in the face of which I cannot but regret she has been permitted to leave this port; and I report them to you that you may take such steps as you may deem necessary to prevent this flagrant violation of neutrality.

Respectfully,
(Signed) THOMAS H. DUDLEY, *Consul.*

The surveyor of customs, by direction of the collector, immediately went on board of the Hercules, and reported as follows:[3]

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[1] Appendix, vol. i, p. 200.
[2] Ibid., p. 203.
[3] Ibid., p. 205.
[4] Ibid., p. 204.

Mr. Morgan to Mr. Edwards.

SURVEYOR'S OFFICE, *July* 30, 1862.

SIR: Referring to the steamer built by the Messrs. Laird, which is suspected to be a gun-boat intended for some foreign government, I beg to state that, since the date of my last report concerning her, she has been lying in the Birkenhead docks, fitting for sea, and receiving on board coals and provisions for her crew.

She left the dock on the evening of the 28th instant, anchored for the night in the Mersey, abreast the Canning dock, and proceeded out of the river on the following morning, ostensibly on a trial-trip, from which she has not returned.

I visited the tug Hercules this morning as she lay at the landing-stage at Woodside, and strictly examined her holds and other parts of the vessel. She had nothing of a suspicious character on board, no guns, no ammunition, or anything appertaining thereto. A considerable number of persons, male and female, were on deck, some of whom admitted to me that they were a portion of the crew, and were going to join the gun-boat.

I have only to add that your directions to keep a strict watch on the said vessel have been carried out; and I write in the fullest confidence that she left this port without any part of her armament on board. She has not as much as a single gun or musket.

It is said that she cruised off Port Lynas last night, which, as you are aware, is some fifty miles from this port.

Very respectfully,
(Signed) E. MORGAN, *Surveyor.*

Mr. Dudley's letter and the surveyor's report were transmitted to the board of customs. Immediately on the receipt of them the following telegraphic message was sent to the collector:[1]

JULY 31, 1862—11.35 a. m.

Examine master of Hercules, whether he can state that guns are concealed in vessel 290, and that powder has been taken on board.

This order was executed, and the collector replied as follows:[2]

Mr. Edwards to the commissioners of customs.

CUSTOM-HOUSE, *Liverpool, August* 1, 1862.

HONORABLE SIRS: The master of the Hercules has attended here this morning, and I beg to inclose his examination taken on oath, whereby it will be seen that the statement in the letter of the American consul, forwarded with my report of the 30th ultimo, is not borne out. The board will see that the vessel has left the port. Should opportunity, however, offer, she shall be seized in accordance with the directions of the board, as contained in the telegram of yesterday's date.

(Signed) S. PRICE EDWARDS.

The examination of Thomas Miller, taken on oath by the collector.

I am the master of the steam-tug Hercules. I accompanied the new gun-boat built by Mr. Laird (No. 290, I believe she is distinguished by) to sea on Tuesday last. I kept in sight of her, in case the services of the steam-tug should be required, until she lay to, about a mile off the bell buoy, and about 14 miles from the Canning dock. The vessel left her anchorage about 10 a. m., and I left her between 4 and 5 p. m. I saw nothing on board the ship but coals. I returned from the vessel in the evening, and got into the river about 7 p. m.; there were some of Mr. Laird's workmen and riggers on board; all of these, I believe, I brought back. The next day, Wednesday, I left the landing-stage in the river, and took with me from twenty-five to thirty men, who, I believe, were to be employed on board as part of the crew; they appeared to be all sailors or firemen. I found the vessel about 3 o'clock that afternoon in Beaumaris Bay. I put the men on board, and lay alongside till midnight. We were from three to four miles from the shore; it was a fine day. Besides the men, I put on board an anchor-stock, a piece of wood about 15 feet long, and two pieces of brass belonging to the machinery. I neither carried guns, powder, or ammunition of any kind to her,
[92] nor did I see anything of this description on board, *nor yet being put on board.
There was no vessel of any description came near the vessel while I was by her. I have never seen the American consul to my knowledge. I never told him or any one else that they were taking powder on board the new vessel. I never was told what she was for, or what was her destination. The piece of wood which I have mentioned was not in any way fit for a gun-carriage. I thought it was intended to rest the ship's boat upon; it was planed and cut out for some purpose, if not to rest the boat upon.

(Signed) THOMAS MILLER.

Sworn at the custom-house, Liverpool, August 1, 1862.

[1] Appendix, vol. i, p. 205. [2] Ibid., p. 206.

The subjoined letters, received by the board of customs from their officers at Beaumaris, Holyhead, and Cork, show what was done by those officers in obedience to the orders of the board:[1]

Mr. Cunnah to the secretary to the customs, London.

CUSTOM-HOUSE, *Holyhead, August* 1, 1862.

SIR: Your telegram respecting the iron steam-vessel 290 is duly to hand.

The vessel is not, at present, within the limits of this creek. I have arranged that constant watch shall be kept, so that immediately upon her entering either of the harbors or the roadstead she will be seized; and I am now leaving (to go along the coast) to Point Lynas and Amlwch to make further inquiries.

I beg also to state that I have forwarded a copy of the message to the collector of customs, Beaumaris, and the principal coast officer at Amlwch.

I have, &c.,
(Signed) E. B. CUNNAH,
Principal Coast Officer.

Mr. Smith to Mr. Gardner.

CUSTOM-HOUSE, *Beaumaris, August* 2, 1862.

SIR: On receipt of your telegram on the 1st instant, directing me to seize the steamship 290, reported to be off Point Lynas, I immediately proceeded to Amlwch and instituted inquiries, but could get but little satisfactory information. I heard that there had been a suspicious screw-bark in Moelfra Roads on Wednesday last; that the shore-boats would not be allowed alongside. I called on Mr. Pierce, chief officer of the coast-guard, and consulted with him; I requested that he should order his boat, with four hands armed, to be at Point Lynas by 5 o'clock the next morning to meet us; I took a car at Amlwch, accompanied by Mr. Pierce and my principal coast officer, and proceeded to Point Lynas light-house, and made every inquiry of the keeper. I then proceeded to the telegraph station, and on inquiry there found that the suspected vessel had not been seen by either party since Wednesday evening, when she was riding in Moelfra Roads. We then got into the coast-guard boat and proceeded to Moelfra, and found that a large black screw-bark, or three-masted topsail-yard screw-steamer, with black funnel, and no name or port on her, had arrived at Moelfra Roads at 7.30 p. m. on Tuesday evening last, and came to anchor; that a fishing-boat was going alongside, and asked if they wanted any fish; the answer from the steamer was, "No; keep off." On Wednesday they appeared to be washing the decks and cleaning her, and about 5 p. m. a tug-boat, supposed to belong to the Old Tug Company of Liverpool, went alongside with what was supposed to be an excursion party, the passengers going on board the screw-steamer; there was music on board. The tug-boat remained alongside until about 10 o'clock p. m. the same evening, when she left; the shore people could not say whether she took the party she brought back again, because it was too dark. At 3 o'clock a. m. the following morning, viz, Thursday, the screw-steamer got under weigh and proceeded to sea, and has not since been seen by any parties on the shore along the whole part of that coast.

They held no communication whatever with the shore during her stay in Moelfra Roads.

I am, &c.,
(Signed) W. H. SMITH, *Collector.*

Mr. Cassell to the secretary to the customs.

Gun-boat 290, the subject of telegram from the secretary of customs, 31st ultimo, and board's order, 89/1862.

CUSTOM-HOUSE, *Cork, August* 4, 1862.

SIR: Immediately on the receipt of your telegraphic message steps were taken for the detention of the above-mentioned vessel, should she put into this port; but up to the close of this letter, 4 p. m., she has not made her appearance.

I am, &c.,
(Signed) F. CASSELL, *Collector.*

The vessel in fact sailed from the port of Liverpool on Tuesday, the 29th July, between 10 and 11 a. m. She sailed ostensibly with the intention of making a trial-trip and returning to her moorings; and,

[1] Appendix, vol. i, pp. 207, 208.

[99] in order to give an appearance of truth to this *pretense, a number of persons were taken on board, who, after accompanying her for a short distance, returned to Liverpool in a tug-boat. She had not been registered as a British ship, nor had she been cleared at the custom-house for an outward voyage. She took her departure before the report of the law-officers had been received at the foreign office, and therefore before any orders for her detention had been given. Whither she was bound, or in what direction she was likely to shape her course, was unknown to the officers of the government, as it was to Mr. Adams, Mr. Dudley, and their informants and advisers. From Mr. Dudley's communications with his own government, it appears that on the 30th July he thought she would probably go to Nassau; afterward he gave some credence to a rumor that she was bound for a Spanish port, and subsequently believed that she would try to reach some port in the Confederate States. Her Majesty's government was equally without means of knowledge. It will have been seen, however, that orders to detain her were sent by the government, not only to Liverpool, whither it was still possible that she might return, but to other ports, which (or the roadsteads adjacent to which) she might probably enter before proceeding to sea. She did in fact enter a roadstead on the coast of North Wales, which lies at a considerable distance from both Beaumaris and Holyhead, but had quitted it before the officers of customs authorized to detain her could arrive on the spot.

It will have been seen also that when she quitted Liverpool, and up to the time of her final departure from British waters, she was entirely unarmed, and had on board no guns, gun-carriages, or ammunition. As to the persons who composed her crew, and the terms on which they were hired, and as to any other persons who may have gone to sea on board of her, Her Majesty's government had not, through its officers at Liverpool or otherwise, any means of information. It appears, however, from depositions which have been subsequently communicated to Her Majesty's government by Mr. Adams, and Her Majesty's government believes it to be true, that the crew, after the ship had left Liverpool, signed articles for Nassau or some intermediate port; that persuasion was afterward used, while the ship was at sea, but still under British flag, to induce them to enlist in the naval service of the Confederate States, and that such of them as were induced to do so signed fresh articles after the arrival of the vessel at the Azores.

Mr. Adams had, in the month of June, 1862, requested Captain Craven, commanding the United States war-steamer Tuscarora, to bring his ship from Gibraltar to Southampton, in order to wait for and capture the vessel should she put to sea. The Tuscarora came to Southampton accordingly in the beginning of July, and, on the 17th July, Mr. Adams wrote to Mr. Seward, "I have supplied to Captain Craven all the information I can obtain respecting the objects and destination of this vessel, and have advised him to take such measures as may, in his opinion, be effective to intercept her on her voyage out. He will probably leave Southampton in a day or two."

The Tuscarora, however, lay at Southampton until the evening of the 29th July, when her commander, after receiving two telegraphic messages from Mr. Adams informing him that the vessel had sailed, and urging him to put to sea immediately, took his departure for Queenstown. An account of the failure of the Tuscarora to intercept the vessel is given in the subjoined dispatch addressed by Mr. Adams to Mr. Seward:[1]

[1] Appendix, vol. i, p. 251.

Mr. Adams to Mr. Seward.

LEGATION OF THE UNITED STATES,
London, August 7, 1862.

SIR: In my dispatch of the 30th July I brought down the narrative of the proceedings in the case of the gun-boat No. 290 to the morning of the 29th. Later in the day I sent another telegram to Captain Craven, giving further intelligence from Liverpool, urging his departure from Southampton; also, that he should let me know his next movements, and cautioning him about the line of British jurisdiction. To this message the captain immediately replied, announcing his departure at 8 o'clock, and his intention to touch at Queenstown for further information. On the 30th of July I wrote to Captain Craven, by mail to Queenstown, giving fuller details, received at half-past 11 o'clock from Mr. Dudley, touching the movements of the gun-boat off Point Lynas on that day. Early on the morning of the 31st I sent a telegram to Captain Craven, at Queenstown, apprising him that No. 290 was said to be still off Point Lynas. At about 10 o'clock p. m. of that evening I received a telegram from Captain Craven, dated at Queenstown, announcing his reception of my dispatch, and his intention to await further instructions. This was answered by me early the next morning in the following words, by telegram:

"At latest, yesterday, she was off Point Lynas; you must catch her if you can, and if necessary, follow her across the Atlantic."

On the same day I received by mail a note from Captain Craven, dated the 31st, announcing the receipt of my dispatches, and his decision to go to Point Lynas at noon on the 1st instant.

[100] *Captain Craven seems to have sailed up Saint George's Channel. This last movement must have been made in forgetfulness of my caution about British jurisdiction, for, even had he found No. 290 in that region, I had in previous conversations with him explained the reasons why I should not consider it good policy to attempt her capture near the coast. In point of fact, this proceeding put an end to every chance of his success.

On the 5th instant I received a letter from him dated the 4th, at Queenstown, inclosing a report of his doings, addressed to the Secretary of the Navy, left open for my inspection, which I forward by this steamer, and at the same time apprising me of his intention to go round to Dublin, and await a letter from me prior to his return to his station at Gibraltar. To this I sent the following reply:

"LEGATION OF THE UNITED STATES.
"*London, August* 6, 1862.

"I will forward your letter to the Secretary of the Navy. Having in my hands sufficient evidence to justify the step, I was willing to assume the responsibility of advising you to follow the boat No. 290, and take her wherever you could find her. But I cannot do the same with other vessels, of which I have knowledge only from general report. I therefore think it best that you should resume your duties under the general instructions you have from the Department, without further reference to me."

It may have been of use to the Tuscarora to have obtained repairs at Southampton to put her in sea-worthy condition. But had I imagined that the captain did not intend to try the sea, I should not have taken the responsibility of calling him from his station. I can only say that I shall not attempt anything of the kind again.

I have, &c.,
(Signed) CHARLES FRANCIS ADAMS.

Captain Craven's failure to intercept the vessel appears to have been regarded by Mr. Adams as evincing remissness and dilatoriness on the part of the former, and a want of the promptitude and judgment which ought to have been used under the circumstances of the case. It is probable, indeed, that he would have succeeded in intercepting her if he had used the needful activity and dispatch.

For some weeks after the sailing of the vessel (which, up to the time of her departure, had continued to be known only as "The 290," from the number which she bore in the builders' yard) nothing more was heard of her. On the 1st September, 1862, a steamship named the Bahama, which, on the 13th September, had cleared from Liverpool for Nassau, returned to the port and was entered as in ballast from Angra, in the Azores. On the 3d September, 1863, the assistant collector of customs at Liverpool sent to the board of customs, with reference to this ship, the subjoined letter and inclosures:[1]

[1] Appendix, vol. i, p. 208.

Mr. Stuart to the commissioners of customs.

CUSTOM-HOUSE, *Liverpool, September* 3, 1862.

HONORABLE SIRS: With reference to the collector's report of the 1st ultimo, I beg to transmit, for the information of the board, the annexed reports from the surveyor and assistant surveyor, detailing some information they have obtained respecting the gun-boat No. 290. I also inclose a specification of the cargo taken out by the Bahama, and which there appears no reason to doubt was transferred to the gun-boat.

Respectfully,
(Signed)

W. G. STUART,
Assistant Collector.

[Inclosure 1.]

Mr. Hussey to Mr. Stuart.

LIVERPOOL, *Nelson Dock, September* 2, 1872.

SIR: I beg to state that a steamship called the Bahama arrived here last evening from Angra, (the capital of the island of Terceira, one of the Azores,) having previously cleared from Liverpool for Nassau.

In consequence of a paragraph which appeared in the newspaper of this morning in reference to the above vessel, I deemed it expedient to send for the master, Tessier, and to inquire the nature of the cargo shipped on board in Liverpool. He states that he received sixteen cases, the contents of which he did not know, but presumed they were arms, &c., and, after proceeding to the above port, transferred the sixteen cases to a Spanish vessel, and returned to Liverpool with a quantity of coals.

The master also states that, when off the Western Islands, he spoke the confederate gun-boat Alabama, (No. 290, built in Mr. Laird's yard at Birkenhead,) heavily armed, having a 100-pounder pivot-gun mounted at her stern, which he believes is intended to destroy some of the sea-port towns in the Northern States of America.

The above case having excited much interest in the port, I deemed it expedient to report the facts for your information.

Respectfully,
(Signed)

J. HUSSEY,
Assistant Surveyor.

[101] [*Inclosure 2.]

Specification of shipment per Bahama, August 11, 1862.

			Cwts.	qrs.	lbs.
[B] O P	1.—1 case containing 1 cast-iron gun	weighing	49	1	14
	2.—1 case containing 1 broadside carriage	weighing	12	0	14
	3.—1 case containing rammers, sponges, handspikes, &c	weighing	2	1	14
[B] O P_2	1.—1 case containing 1 cast-iron gun	weighing	49	1	14
	2.—1 case containing 1 broadside carriage	weighing	12	0	14
	3.—1 case containing rammers, sponges, handspikes, &c	weighing	2	0	10
[B] O P SOL	1 to 6.—6 cases containing 50 cast shot	weighing	13	1	20
[B] B SOL	1 to 6.—6 cases containing 50 cast shot	weighing	17	2	6
[B] B	1.—1 case containing brass vent-covers	weighing	0	0	5
	Total weight		158	1	27

Total value, £220.

[Inclosure 3.]

Mr. Morgan to Mr. Stewart.

SURVEYOR'S OFFICE, *September* 3, 1862.

SIR: I beg to report, for your information, that the British steamship Bahama, Tessier master, which vessel cleared out for Nassau, and sailed on the 13th ultimo with nineteen cases, contents as per specification annexed, has returned to this port, and entered inwards in ballast from Angra.

The master of her is not disposed to enter very freely into conversation upon the subject, but from others on board there appears to be no doubt that the cases above referred to were transferred to the gun-boat No. 290.

Captain Semmes, formerly of the confederate steamer Sumter, took passage in the Bahama, together with some fifty other persons, and they are described as being the permanent crew of the 290, now known as the Alabama.

Respectfully,
(Signed) E. MORGAN,
Surveyor.

The Bahama had cleared for Nassau in the ordinary way, with a cargo of munitions of war, which it was probable were intended for the Confederate States. Her clearance and departure presented, so far as Her Majesty's government is aware, no circumstances distinguishing her from ordinary blockade-runners. No information was ever given or representation made to Her Majesty's government as to this ship, or her cargo, before she left British waters. But even had a suspicion existed that the cargo was exported with the intention that it should be used, either in the Confederate States or elsewhere out of Her Majesty's dominions, in arming a vessel which had been unlawfully fitted in England for warlike employment, this would not have made it the duty of the officers of customs to detain her, or empowered them to do so. Such a transaction is not a breach of English law, nor is it one which Her Majesty's government was under any international obligation to prevent.

On the 5th of September, 1862, Earl Russell received from Mr. Adams a note inclosing a letter from Mr. Dudley, and also a deposition purporting to be made by one Redden, a seaman, who had sailed in the Alabama on her outward voyage, and had returned in the Bahama to Liverpool. The note and its inclosures were as follows:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, September 4, 1862.

MY LORD: I have the honor to transmit the copy of a letter received from the consul of the United States at Liverpool, together with a deposition in addition to the others already submitted with my notes of the 22d and 24th of July, going to show the further prosecution of the illegal and hostile measures against the United States in
[102] connection with the outfit of the gun-boat No. 290 from the port of *Liverpool. It now appears that supplies are in process of transmission from here to a vessel fitted out from England, and now sailing on the high seas, with the piratical intent to burn and destroy the property of the people of the country with which Her Majesty is in alliance and friendship. I pray your lordship's pardon if I call your attention to the fact that I have not yet received any reply in writing to the several notes and representations I have had the honor to submit to Her Majesty's government touching this flagrant case.

Renewing, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1.]

Mr. Dudley to Mr. Adams.

UNITED STATES CONSULATE,
Liverpool, September 3, 1862.

SIR: I have just obtained the affidavit of the boatswain's mate who shipped in and went out in the No. 290, now called the Alabama. I inclose it to you, with bill for his services, signed by Captain Butcher. He returned on the Bahama. He states that the Alabama is to cruise on the line of packets from Liverpool to New York; that Semmes told them so. This may have been said for the purpose of misleading us. The bark that took out the guns and coal is to carry out another cargo of coal to her. It is to take it on either at Cardiff or Troon, near Greenock, in Scotland; the bark to meet

[1] Appendix, vol. i, p. 209.

the Alabama near the same island where the armament was put on board, or at least in that neighborhood. There will be no difficulty to get other testimony if it is required.

I am, &c.,
(Signed) THOS. H. DUDLEY.

P. S.—There were two American vessels in sight when they parted with the Alabama, which Captain Semmes said he would take. They no doubt were taken and destroyed, the first-fruits from this vessel.

T. H. D.

[Inclosure 2.]

Deposition of H. Redden.

Henry Redden says: I reside at 16 Hook street, Vauxhill road, and am a seaman. In April last I shipped as boatswain's mate of a vessel lying in Laird's dock at Birkenhead, known as 290, and worked on board until she sailed.

We sailed from Liverpool about 28th July; Captain Butcher was master; Mr. Law, a southerner, was mate; Mr. Lawrence Young was purser. A Captain Bullock went out with us, but left with the pilot at Giant's Cove, near Londonderry. There were five ladies and a number of gentlemen went with us as far as the Bell buoy. We went first to Moelfra Bay, near Point Lynas, when we anchored and remained about thirty hours. The Hercules tug brought down about forty men to us there; nothing else was then taken on board. Her crew then numbered ninety men, of whom thirty-six were sailors. She had no guns on board then, nor powder nor ammunition. We left Moelfra Bay on the Thursday night at 12 o'clock, and steered for the North Channel. We discharged Captain Bullock and the pilot on Saturday afternoon. We first steered down the South Channel as far as Bardsea, when we 'bout ship and steered north. From Derry we cruised about until we arrived at Angra, eleven days after leaving Holyhead. About four days after we arrived, an English bark, ———, Captain Quinn, arrived from London with six guns, two of them 98-pounder (one rifled and the other smooth-bore) pivot guns, and four 38-pounder breech-guns, smooth-bore broadside guns, 200 or 300 barrels of powder, several cases of shot, a quantity of slops, 200 tons of coal. She came alongside and made fast. We were anchored in Angra Bay about a mile and a half or two miles from shore. After being there about a week, and while we were taking the guns and ammunition on board, the authorities ordered us away. We went outside and returned at night. The bark was kept lashed alongside, and we took the remainder of the guns, &c., on board as we could. While we were discharging the bark, the steamer Bahama, Captain Tessier, arrived from Liverpool. Captain Bullock, Captain Semmes, and forty men came in her. She also brought two 38-pounder guns smooth-bore, and two safes full of money in gold. She had a safe on board before, taken on board at Birkenhead. The Bahama was flying the British flag. The Bahama towed the bark to another place in the island, and we followed. The next morning we were ordered away from there, and went out to sea until night, when we returned to Angra Bay. The Bahama, after towing the bark away the evening of her arrival, came back to the Alabama, or 290, in Angra Bay, made fast alongside of her, and discharged the guns on board of her and the money.

The men struck for wages, and would not then go on board. There were four engineers, a boatswain, and captain's clerk named Smith, also came in the Bahama, and they were taken on board the same evening. All three vessels continued to fly the British flag the whole time. The guns were mounted as soon as they were taken on board. They were busy at work getting them and the Alabama or 290 ready for fighting while the Bahama and the bark were alongside. On the Sunday afternoon following (last Sunday week) Captain Semmes called all hands aft, and the confederate flag was hoisted, the band playing "Dixie's Land." Captain Semmes addressed the men, and said he was deranged in his mind to see his country going to ruin, and had to steal out of Liverpool like a thief. That instead of them watching him he was now going after them. He wanted all of us to join him; that he was going to sink, burn, and destroy all his enemies' property, and that any that went with him was entitled to two-twentieths prize-money; it did not matter whether the prize was sunk, or burned, or sold, the prize-money was to be paid. That there were only four or five [103] northern ships that he was afraid of. *He said he did not want any to go that were not willing to fight, and there was a steamer alongside to take them back if they were not willing.

The vessel was all this time steaming to sea, with the Bahama at a short distance. Forty-eight men, most of them firemen, refused to go, and an hour afterward were put on board the Bahama. I refused to go, and came back with the rest in the Bahama. Captain Butcher, Captain Bullock, and all the English engineers came with us, and landed here on Monday morning. When we left the Alabama she was all ready for fighting, and steering to sea. I heard Captain Semmes say he was going to cruise in the track of the ships going from New York to Liverpool, and Liverpool to

New York. The Alabama never steamed while I was in her more than eleven knots, and cannot make any more. We signed articles while in Moelfra Bay for Nassau or an intermediate port. Captain Butcher got us to sign. The provisions were put on board at Laird's yard before sailing; they were for six months. When we left her she had about ninety men, and eight guns mounted, three on each side and two pivots.

(Signed) HENRY REDDEN.

Declared and subscribed at Liverpool aforesaid, the 3d day of September, 1862, before me.

(Signed) WILLIAM G. BATESON,
Notary Public, and a Commissioner to Administer Oaths in Chancery.

Account.

August 31.—Henry Redden, at £6 per month:

	£	s.	d.
One month and five days, at 4*s*	7	0	0
Advance, £6; tobacco, 1*s*. 8*d*	6	1	8
Amount due	0	18	4

(Signed) MATTHEW JAMES BUTCHER,
Master of Steamship 290.

Earl Russell, on the 22d September, 1862, replied as follows:[1]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *September* 22, 1862.

SIR: I have the honor to acknowledge the receipt of your letter of the 4th instant inclosing a copy of a letter from the United States consul at Liverpool, together with the deposition of Henry Redden, respecting the supply of cannon and munitions of war to the gun-boat No. 290. You also call attention to the fact that you have not yet received any reply to the representations you have addressed to Her Majesty's government upon the subject.

I had the honor, in acknowledging the receipt of your letter of the 23d of June, to state to you that the matter had been referred to the proper department of Her Majesty's government for investigation. Your subsequent letters were also at once forwarded to that department, but, as you were informed in my letter of the 28th of July, it was requisite, before any active steps could be taken in the matter, to consult the law-officers of the Crown. This could not be done until sufficient evidence had been collected, and from the nature of the case some time was necessarily spent in procuring it. The report of the law-officers was not received until the 29th of July, and on the same day a telegraphic message was fowarded to Her Majesty's government stating that the vessel had sailed that morning. Instructions were then dispatched to Ireland to detain the vessel should she put into Queenstown, and similar instructions have been sent to the governor of the Bahamas in case of her visiting Nassau. It appears, however, that the vessel did not go to Queenstown, as had been expected, and nothing has been since heard of her movements.

The officers of customs will now be directed to report upon the further evidence forwarded by you, and I shall not fail to inform you of the result of the inquiry.

I am, &c.,
(Signed) RUSSELL.

Mr. Adams's note, with its inclosures, having been referred to the commissioners of customs, they, on the 25th September, 1862, reported as follows:[2]

The commissioners of customs to the lords commissioners of the treasury.

CUSTOM-HOUSE, *September* 25, 1862.

Your lordships having, by Mr. Arbuthnot's letter of the 16th instant, transmitted to us, with reference to Mr. Hamilton's letter of the 2d ultimo, the inclosed communication from the Foreign Office, with copies of a further letter, and its inclosures, from the United States minister at this court respecting the supply of cannon and muni-
[104] tions of war to the gun-boat No. 290, recently built at Liverpool, and now in the service of the so-called Confederate States of America, and your lordships having desired that we would take such steps as might seem to be required in view of the facts therein represented, and report the result to your lordships—

[1] Appendix, vol. i, p. 211.

[2] Ibid, p. 213.

We have now to report:

That, assuming the statements set forth in the affidavit of Redden (who sailed from Liverpool in the vessel) which accompanied Mr. Adam's letter to Earl Russell to be correct, the furnishing of arms, &c., to the gun-boat does not appear to have taken place in any part of the United Kingdom, or of Her Majesty's dominions, but in or near to Angra Bay, in the Azores, part of the Portuguese dominions. No offense, therefore, cognizable by the laws of this country appears to have been committed by the parties engaged in the transactions alluded to in the affidavit.

With respect to the allegation of Redden that the arms, &c., were shipped on board the 290 in Angra Bay, partly from a bark (name not given) which arrived there from London, commanded by Captain Quinn, and partly from the steamer Bahama, from Liverpool, we beg to state that no vessel having a master named Quinn can be traced as having sailed from this port for foreign parts during the last six months. The Knight Errant, Captain Quine, a vessel of 1,342 tons burden, cleared for Calcutta on the 12th April last with a general cargo, such as usually exported to the East Indies, but, so far as can be ascertained from the entries, she had neither gunpowder nor cannon on board.

The Bahama steamer cleared from Liverpool on the 12th ultimo for Nassau. We find that Messrs Fawcett, Preston and Co., engineers and iron-founders, of Liverpool, shipped on board that vessel nineteen cases containing guns, gun-carriages, shot, rammers, &c., weighing in all 158 cwt. 1 qr. 27 lbs. There was no other cargo on board, excepting 552 tons of coals for the use of the ship; and the above-mentioned goods having been regularly cleared for Nassau in compliance with the customs laws, our officers could have no power to interfere with their shipment.

With reference to the further statement in the letter of Mr. Dudley, the consul of the United States at Liverpool, that the bark that took out the guns and coal is to carry out another cargo of coal to the gun-boat 290, either from Cardiff or Troon, near Greenock, we have only to remark that there would be great difficulty in ascertaining the intention of any parties making such a shipment, and we do not apprehend that our officers would have any power of interfering with it were the coals cleared outward for some foreign port in compliance with the law.

(Signed) F. GOULBURN.
W. R. GREY.

A copy of this report was sent to Mr. Adams by Earl Russell.

As to the vessel stated in Redden's deposition to have been commanded by a Captain Quinn, she may perhaps have been the Agrippina, McQueen, master, which appears, by the register of clearances kept in the port of London, to have cleared from that port for Demerara in August, 1862.

Her Britannic Majesty's government has reason to believe that Butcher, while the vessel afterward called the Alabama was in the waters of the Azores, falsely stated both to the Portuguese officials and to the British vice-consul that she was the steamship Barcelona, from London to Nassau, and that he desired only to coal the vessel in smooth water, having no occasion to communicate with the town. These false statements were made in order to escape interference on the part of the authorities of Terceira.

Depositions purporting to be made by other persons who had taken service in the Alabama, and had afterward left that ship during her cruise, were afterward furnished to Her Majesty's government by Mr. Adams. Among these was a deposition purporting to be made by one John Latham, part of which was as follows:[1]

Deposition of John Latham.

[Extract.]

I, John Latham, of 36 Jasper street, Liverpool, in the county of Lancaster, engineer, make oath and say as follows:

1. About the 8th or 10th of August, 1862, I signed articles at the Sailors' Home, Liverpool, to ship in the steamship Bahama, Captain Tessier, for a voyage to Nassau and back. The Bahama went out of the Bramley Moore dock the same night about 12

[1] Appendix, vol. i, p. 226.

o'clock, and went into the river and lay to. Captain Semmes, Captain James D. Bullock, and some other officers came on board, and about half past 7 o'clock a. m. a tug-boat came alongside with some seamen on board; the tug-boat accompanied us out about ten miles. The tug then left us, and a tall gentleman, with a reddish face and pock-marked, who came from Cunard, Wilson & Co.'s office, left us and went into the tug; as he left us he said, "I hope you will make a good thing of it, and that you will stop where you are going to." We then proceeded on our voyage, and stood out some days, when we found we were going to the Western Isles.

2. About the 17th or 18th of August we arrived at Terceira, and we there found the Alabama and the bark Agrippina. Captain Butcher, who was on board the Alabama, hailed us and told us to go round the island, and he would be after us, but it would take them three-quarters of an hour to get his steam up. We went on, and he followed us, and the Alabama went under the lee of the island, and a shot was fired across the
[105] Bahama's bows from a battery on shore, so we stopped out until the morning.

In the morning we went alongside the Alabama, and some small cases and a safe containing money was passed into the Alabama from our ship, and we then parted and anchored a little distance from her, and the bark Agrippina went and discharged the remainder of her cargo into the Alabama. During this time Captain Semmes and Captain Bullock were going backward and forward to the Alabama, but would not let any of the officers go. On Sunday, the 24th of August, Captain Semmes came on board the Bahama, and called us under the bridge, he himself and the officers standing on the bridge; he addressed us and said, "Now, my lads, there is the ship," (pointing to the Alabama;) "she is as fine a vessel as ever floated; there is a chance which seldom offers itself to a British seaman, that is, to make a little money. I am not going to put you alongside of a frigate at first; but after I have got you drilled a little, I will give you a nice little fight." He said, "There are only six ships that I am afraid of in the United States Navy." He said, "We are going to burn, sink, and destroy the commerce of the United States; your prize-money will be divided proportionately according to each man's rank, something similar to the English navy." Some of the men objected, being naval reserve men. Captain Semmes said, "Never mind that, I will make that all right; I will put you in English ports where you can get your book signed every three months." He then said, "There is Mr. Kell on the deck, and all those who are desirous of going with me let them go aft and give Mr. Kell their names." A great many went aft, but some refused. A boat came from the Alabama, and those who had agreed to go went on board. Captain Semmes and the officers went on board. Mr. Low, the fourth lieutenant, then appeared in uniform, and he came on board the Bahama, endeavoring to induce the men to come forward and join, and he succeeded in getting the best part of us. I was one who went at the last minute. When I got on board the Alabama, I found a great number of men that had gone on board of her from Liverpool. Captain Semmes then addressed us on board the Alabama, and Captain Butcher was there also, who had taken the vessel out. Captain Semmes said he hoped "we should all content ourselves and be comfortable, one among another; but any of you that thinks he cannot stand to his gun I don't want." He then called the purser, and such as agreed to serve signed articles on the companion-hatch, and on signing the men received either two months' pay in advance, or one month's wages and a half-pay note. I took a month's wages and a half-pay note for £3 10*s.* a month in favor of my wife, Martha Latham, 19 Wellington street, Swansea; the note was drawn on Fraser, Trenholm & Co., of Liverpool, but it was paid at Mr. Klingender's, in Liverpool; the note was signed by Captain Semmes, Yonge, who was the paymaster, and Smith, the captain's clerk. I sent £5 and this half-pay note ashore by Captain Bullock, and he forwarded it with a letter to my wife.

3. Captain Bullock, on the passage out, and after we arrived at Terceira, used arguments to induce us to join the Alabama. On several occasions he advised us, and urged the men to join.

4. As soon as the men who had consented to go had all signed articles, the English ensign which the Alabama had been flying was pulled down, and the confederate flag hoisted, and a gun was fired. The men who declined joining left the ship with Captains Bullock and Butcher for the Bahama, and we proceeded under the command of Captain Semmes.

Her Majesty's government neither affirms nor denies the truth of the statements of these persons, some of which statements, however, it has reason to believe to be incorrect. But Her Majesty's government believes it to be true that the vessel known at first as the 290, and afterwards as the Alabama, having left Her Majesty's dominions unarmed, was armed for war after arriving at the Azores, either wholly in Portuguese waters, or partly in Portuguese waters and partly on the high seas; that her crew were, after her arrival in the Azores, hired and

signed articles for service in the confederate navy, either in Portuguese waters or on the high seas; that Captain Semmes took command of her after she arrived at the Azores; and that, after she had been armed as aforesaid, she was commissioned (being then out of the dominions of Her Britannic Majesty) as a ship of war of the Confederate States. Her captain and officers were, as Her Majesty's government believes, all American citizens, and were at the time commissioned officers in the confederate service, except the assistant surgeon, who was a British subject. John Low, one of the lieutenants, who has been stated to have been an Englishman, was, as Her Majesty's government believes, a citizen of the State of Georgia. Of the common seamen and petty officers Her Majesty's government believes that a considerable number were British subjects, who were induced by Captain Semmes (himself an American citizen) to take service under him; but the ship's company was afterward largely increased by the addition of many American seamen, drawn from the crews of United States vessels captured by the Alabama during her cruise. In this way her crew, which is stated to have numbered about 84 men when the ship left the Azores, had increased to nearly 150 when she arrived at Martinique.

In the above-mentioned deposition of John Latham, which was received by Her Majesty's government from Mr. Adams on the 13th January, 1864, it was stated that a considerable number of the seamen who had been induced to take service in the ship belonged to the royal naval reserve; and a list or schedule was given, purporting to be a list of the crew, and to specify the names of nineteen such seamen. Inquiries were thereupon made at the admiralty with reference to the matter, and the subjoined letters, addressed by the secretary of that department to one of the under secretaries of state for foreign affairs, show both what steps had been previously taken by the lords
[106] *commissioners of the admiralty, and what was afterward done in consequence of such inquiries:[1]

The secretary to the admiralty to Mr. Hammond.

ADMIRALTY, *June* 24, 1864.

SIR: With reference to your letter of the 21st instant, relative to the statement that many of the crew of the late confederate ship Alabama were naval-reserve men, I am commanded by my lords commissioners of the admiralty to acquaint you, for the information of Earl Russell, that the only men who were suspected of having joined confederate vessels, and who were ascertained to be improperly absent, were discharged from the naval-reserve force on the 25th January last.

My lords, however, concur with his lordship that it will be desirable to ascertain whether any of the men on board the Alabama did belong to the naval reserve, and they will take the necessary steps as requested.

I am, &c.,
(Signed) C. PAGET.

The secretary to the admiralty to Mr. Hammond.[2]

ADMIRALTY, *January* 29, 1864.

SIR: In reply to your letter of the 22d instant, respecting the naval-reserve men who are said to form part of the crew of the confederate steamship Alabama, I am commanded by my lords commissioners of the admiralty to acquaint you, for the information of Earl Russell, that only three of the nineteen men described in the printed list as naval reserve men can be identified, viz: David Roach, Peter Hughes, and Michael Mars; and, of those three, the last (Mars) has been already discharged, in consequence of having joined the Alabama, as will be seen by the inclosed copy of a report from the registrar-general of seamen, who has been directed to make inquiries on the subject.

I return the printed list of the crew, which accompanied your letter, with the registrar-general's notations against the names.

I am, &c.,
(Signed) C. PAGET.

[1] Appendix, vol. i, p. 237. [2] Ibid., p. 233.

Mr. Mayo to the commodore comptroller-general of the coast-guard.

GENERAL REGISTER AND RECORD OFFICE OF SEAMEN,
January 27, 1864.

SIR: In accordance with the request contained in your letter of the 25th instant, I beg to acquaint you, for the information of the lords commissioners of the admiralty, that the register-books of the royal naval reserve have been searched, with a view of ascertaining whether the nineteen men described in the annexed list as forming part of the crew of the Alabama belong to the royal naval reserve, and the following is the result of the investigation:

A seaman of the name of David Roach (R. N. R. No. 11919) is reported to have been at Liverpool on the 2d of October, 1862, and a seaman of the name of Peter Hughes (R. N. R. No. 10849) is reported to have been discharged from the Great Eastern, at Liverpool, on the 16th June, 1862. As no subsequent account has been received of either of these naval-reserve men, it is possible that they may be the same men as David Roach and Peter Hughes described in the accompanying list of the crew of the Alabama; but of this I have no proof.

A seaman of the name of Michael Mars formerly belonged to the royal naval reserve, but he was discharged from the force, in consequence of having joined the Alabama. With regard to the remaining sixteen men, who are said to be members of the royal naval reserve, I have to state that I have not been able to trace them in our books by the names given. No persons of the names of William Brinton, Brent Johnson, Samuel Henry, John Duggan, Joseph Connor, William Purdy, Malcolm Macfarlane, John Emory, William Nevins, and William Hearn, have been enrolled in the reserve, and I am unable to indentify as members of the royal naval reserve the seamen serving on board the Alabama in the following names, for the reasons given: William Crawford, native and resident of Aberdeen, and not of Liverpool; James Smith, thirty-two enrolled of this name; John Neil, sailed in Goldfinder, 11th April, 1862—no account since; Thomas Williams, seventeen enrolled of this name; Robert Williams, six enrolled of this name.

I have, &c.,
(Signed) F. MAYO, *Registrar-General.*

The secretary to the admiralty to Mr. Hammond.[1]

ADMIRALTY, *July* 27, 1864.

SIR: I am commanded by my lords commissioners of the admiralty to acquaint you, for the information of Earl Russell, that the board of trade have succeeded in identifying three of the late confederate ship Alabama's men as naval-reserve men, viz, Thomas McMillan, Peter Hughes, Charles Seymour, and that their lordships have ordered them to be dismissed from the force.

I am, &c.,
(Signed) W. G. ROMAINE.

[107] *With respect to the greater number of the names entered in the aforesaid schedule, it was found that no persons bearing those names had in fact been enrolled in the naval reserve.

The subsequent history of the Alabama, so far as it is known to Her Britannic Majesty's government, from the reports of its colonial officers and from other sources, is as follows:

On or about the 18th of November, 1862, the Alabama arrived at Martinique, and anchored in the harbor of Fort de France, where she received permission from the governor to remain for such time as she needed, and to land her prisoners. Her Britannic Majesty's consul at Saint Pierre, in a report made at the time, stated that shortly before her arrival, suspecting that preparations were being made for her to coal there, he had communicated the grounds of his belief to the governor. The following is an extract from the report:

I next deem it proper to acquaint the governor with what I had just learned. He did not seem much surprised, and observed that, if the Alabama came into port, he would act exactly as he had done on a former occasion in the case of the Sumter, when the French government had altogether approved of the measures he had taken in regard to that vessel.

The Alabama remained at Fort de France till the evening of the 19th,

[1] Appendix, vol. i, p. 237.

when she put to sea, eluding the pursuit of the United States war-steamer San Jacinto, which was keeping watch for her within view of the shore, but outside of the territorial waters of the island.

On the 20th of January, 1863, the Alabama came into the harbor of Port Royal, Jamaica, and her commander applied for leave to land the prisoners he had made in his recent engagement with the United States war-steamer Hatteras. This application was granted by the lieutenant-governor, in the following letter to Commodore Dunlop, the senior naval officer at the port:[1]

Lieutenant-Governor Eyre to Commodore Dunlop.

KING'S HOUSE, *January* 21, 1863.

SIR: I have the honor to acknowledge the receipt of your letter of the 21st instant, and beg to acquaint you, in reply, that, having consulted with the attorney-general, I do not see any grounds for objecting to the landing of the prisoners taken by the Alabama.

Common humanity would dictate such a permission being granted, or otherwise fever or pestilence might arise from an overcrowded ship.

Probably the best course would be to reply to Captain Semmes's application, that this government will not interfere with his landing any persons he may think proper.

Of course, once landed, no persons could be re-embarked against their will from British soil.

I have, &c.,
(Signed) E. EYRE.

The following letters, addressed by Commodore Dunlop to the vice-admiral in command on the West Indian station, contain an account of what occurred in relation to the Alabama while she remained at Port Royal:

Commodore Dunlop to Vice-Admiral Sir A. Milne.[2]

ABOUKIR, AT JAMAICA, *January* 23, 1863.

SIR: I have the honor to inform you that on the evening of the 20th a screw-steamer, apparently a man-of-war, was seen off this port about sunset, under French colors. After dark the vessel entered the harbor, and upon being boarded proved to be the screw gun-vessel Alabama, under the so-called Confederate States flag.

2. On the morning of the 21st her commander, Captain Semmes, called on me and asked for permission to land 17 officers and 101 men, the crew of the late United States gun-vessel Hatteras, which had engaged the Alabama twenty-five miles southeast of Galveston, Texas, during the night of the 11th of January, and was sunk. The action, according to Captain Semmes's account, lasted from 13 to 15 minutes, when the Hatteras, being in a sinking state, ceased firing, and the crew were removed on board the Alabama, which there was just time to effect before the Hatteras went down.

3. In answer to Captain Semmes's application to land his prisoners, I replied that I had no authority to give such permission, but would immediately inform his excellency the lieutenant-governor of his request, and let him know the answer I received as soon as possible.

4. I have the honor to annex copies of my correspondence with his excellency and his reply, relative to landing the prisoners, also copy of his excellency's letter
[108] to me, to notify to the captain of *the Alabama the instructions contained in the 3d paragraph of Earl Russell's dispatch to the Duke of Newcastle, and my reply thereto, as well as a copy of my letter to Captain Semmes, inclosing a copy of the 3d and 4th paragraphs of the dispatch referred to above.

5. Captain Semmes then stated that he had six large shot-holes at the water-line, which it was absolutely necessary should be repaired before he could proceed to sea with safety, and asked permission to receive coal and necessary supplies. The necessity of the repairs was obvious, and I informed Captain Semmes that no time must be lost in completing them, taking in his supplies, and proceeding to sea in exact conformity with the spirit of Earl Russell's dispatch. Captain Semmes gave me his word of honor that no unnecessary delay should take place, adding, "My interest is entirely in accordance with your wishes on this point, for if I remain here an hour more than

[1] Appendix, vol. i, p. 265. [2] Ibid., p. 264.

can be avoided I shall run the risk of finding a squadron of my enemies outside, for no doubt they will be in pursuit of me immediately."

Owing to the delay in receiving the lieutenant-governor's answer to my letter relative to landing the prisoners from Spanish Town, it was not until the evening of the 21st that permission to do so reached Captain Semmes, and too late for them to be landed that night. The crowded state of the vessel previous to the landing of the prisoners on the morning of the 22d made it difficult to proceed with the necessary repairs, and no doubt caused some unavoidable delay. As soon as these repairs are completed the Alabama will proceed to sea.

I am, &c.,
(Signed) HUGH DONLOP.

Commodore Dunlop to Vice-Admiral Sir A. Milne.[1]

ABOUKIR, AT JAMAICA, *February* 7, 1863.

SIR: In order to anticipate any exaggeration or false reports that may be circulated in the American newspapers, or otherwise, relative to the visit of the confederate gun-vessel Alabama at this port, and so to save unnecessary correspondence, I have the honor to state herein for your information the whole of the circumstances attending the visit of that vessel from her arrival to the time of her departure from Jamaica.

2. As reported in my letter of the 23d January, the Alabama anchored in this port after dark on the evening of the 20th. She commenced repairing the damages received in action with the Federal gun-vessel Hatteras the next morning, at the same time receiving a supply of provisions and coal.

3. The lieutenant-governor's permission for the prisoners to land not having reached me until the evening of the 21st, they did not leave the Alabama until the morning of the 22d, when they proceeded to Kingston in shore-boats, which were provided by the United States consul.

4. The commander of the late United States gun-vessel Hatteras did not call on me, or send me any communication whatever, during his stay in this island.

5. At 9.30 on the morning of the 21st, the captain of the Jason waited on me to ask if I had any objections to officers of the ships in harbor going on board the Alabama: to which I answered that as it might be hurtful to the feeling of the officers and men, prisoners on board the Alabama, on no account was any one from any of Her Majesty's ships to visit that vessel until after all the prisoners were landed.

6. It having subsequently been reported to me that some officers had been on board the Alabama prior to the landing of the prisoners, I called on the captains and commanders of the different ships to report to me in writing whether any officer under their command had acted contrary to my order. I found from the reports that four officers of the Challenger, four officers of the Cygnet, and one of the Greyhound had gone on board the confederate gun-vessel before my order was made known.

7. I regret that the captains and commanders of these ships should have given permission to their officers previous to communicating with me on the subject, though it was done entirely from thoughtlessness, forgetting that there could be any objection to it. The commander of the Cygnet was in hospital, and therefore is not responsible for the officers of that ship going on board the Alabama.

8. I annex a copy of a report from Commander Hickley relative to the tune of "Dixie's Land" having been played on board the Greyhound shortly after the Alabama anchored, and copy of a correspondence between him and Lieutenant-Commander Blake, of the United States Navy, relative to the same. After the explanation that took place Lieutenant-Commander Blake expressed himself to Commander Hickley as perfectly satisfied that no British officer or gentleman would have been guilty of insulting gallant men suffering from a misfortune to which the chances of war render all liable. I severely reprimanded the lieutenant of the Greyhound who ordered the confederate air to be played, and he expressed his regret for having done so.

9. The fractures made by six large shot or shell near the water-line of the Alabama required extensive repairs, which could not be completed by the unskillful workmen hired here before late in the afternoon of the 25th, and the Alabama sailed at 8.30 of the same evening.

10. In conclusion I have only to state that the confederate vessel was treated strictly in accordance with the instructions contained in Earl Russell's letter of the 31st January, 1862, and exactly as I shall act toward any United States man-of-war that may hereafter call here.

11. Two United States ships of war, the Richmond and Powhatan, arrived here in 1861, coaled and provisioned, and remained in port, the Richmond four days, and the Powhatan three days; the San Jacinto was also here and remained four hours.

I have, &c.,
(Signed) HUGH DUNLOP.

[1] Appendix, vol. i, p. 268.

[109] *On the 11th day of May, 1863, the Alabama arrived at Bahia, having previously touched at the Brazilian island of Fernando de Noronha. About the same time the Florida and Georgia, confederate war steamers, were likewise in Brazilian ports, where they were permitted to purchase coal and provisions and to refit.

The United States minister at Rio de Janeiro hereupon wrote in very warm terms to the Brazilian minister of foreign affairs, arguing that all the three vessels were piratical, and should be treated as such; affirming further that the Alabama, while at Fernando de Noronha, had violated the neutrality of Brazil by making prize of United States vessels within the territorial waters of the empire; insisting that it was the duty of the Emperor's government to capture her; and threatening that if this were not done the Brazilian government should be held responsible by the Government of the United States. In a dispatch dated the 21st May, 1863, he wrote as follows:[1]

The Georgia lands prisoners avowedly taken from a captured American ship, and asks permission of the governor of Bahia to coal and buy provisions, and the permission is cordially granted.

The Florida lands her prisoners, officers, crews, and passengers of American vessels captured and burned, and not only asks and receives permission to coal and purchase provisions, but further asks to be allowed whatever time is necessary to repair her engine and *refit* for her work of destruction; and in defiance of the solemn and most earnest protest of the consul of the United States, this privilege is accorded to her by the governor of Pernambuco, from a desire *not to diminish his means of defense and security!*

The Alabama goes into Bahia, and does not even ask permission to remain. She arrived on the 11th and was still there when the Guienne sailed on the 14th. The consul of the United States protested against her presence, and demanded that she should be seized and held subject to the orders of the Brazilian government for having destroyed American property in Brazilian waters, for which the Government of the United States will hold Brazil responsible, if, now that the opportunity presents, the authorities do not vindicate the sovereignty of Brazil and capture the pirate. The governor of Bahia sends to the United States consul the communication of the governor of Pernambuco to the captain of the pirate, complaining of his piracies, charging him with a violation of Brazilian sovereignty, and ordering him, in consequence of such disgraceful conduct, to leave the waters of Brazil within twenty-four hours. The governor of Bahia thus demonstrates that he knows the piratical character of this vessel, and is familiar with her violation of the sovereignty of Brazil by destroying American vessels within the waters of that empire. He knows, too, that the imperial government, by its acts, had proclaimed this pirate guilty of violations of its sovereignty, and ordered him to leave their port of Fernando Noronha; and yet he deliberately permits him to enter the port of Bahia, refuses to regard the protest of our consul, and, at the last accounts, had harbored him four days without pretending that his presence was not acceptable!

Thus, at this moment, the ports of Brazil are made harbors of refuge and places of resort and departure for three piratical vessels, avowedly designed to prey upon the commerce of the United States. The waters of Brazil are violated with impunity in this piratical work, and after the imperial government had admitted and declared its indignation at such violation of sovereignty, the guilty party is received with hospitality and friendship by the governor of Bahia, and instead of being captured and imprisoned, and his vessel detained, he is fêted, and supplied with the necessary provisions and coal to enable him to continue his depredations upon American commerce. The wharves and streets of Bahia and Pernambuco have been for weeks past swarmed with American sailors and passengers from merchantmen trading with Brazil, which have been captured, and the persons on board robbed by the pirates of the Alabama, Florida, and Georgia, and they have been compelled, in the ports of a friendly nation, to witness their clothing and jewelry, and even family relics, sold on the wharves and in the streets of Bahia and Pernambuco, by their piratical captors, at a tenth of their value; while the piratical vessels and all on board were received and treated as friends, and supplied with the necessary materials to continue their nefarious practices. The scenes which history informs us were rife in the seventeenth century, in the islands of the West Indies, are now being enacted in this the nineteenth century, in the ports of Brazil, and that through no fault of the imperial government—which has already done its whole duty as rapidly as circumstances have permitted—but because the governors of Pernambuco and Bahia, in their sympathy with piracy and pirates, have neglected their duty to Brazil, and brought discredit upon the civilization of the age.

[1] Appendix, vol. i, p. 280.

Your excellency is aware that the facts in connection with the presence of these piratical vessels in the ports of Brazil are even stronger than in this hasty communication they are presented; and, therefore, the undersigned will not for a moment doubt but the imperial government will promptly visit upon the offending governors the punishment they have so richly merited. But it appears to the undersigned that the government of Brazil has still another duty to perform, itself, to the Government of the United States, to humanity, and to the civilization of the age, and that is the capture of the Alabama whenever she enters a Brazilian harbor. That piratical vessel has violated the sovereignty of Brazil by destroying the vessels of a friendly nation within the waters of the empire. The government of Brazil, by its acts, has proclaimed this fact; and, most assuredly, if, when it has the power to do so, it does not capture and detain the offender, it makes itself a party to his acts, and compels the Government of the United States not only to look to Brazil for compensation for injuries done to its commerce within its waters, but also to hold Brazil responsible for permitting this pirate to proceed in his depredations upon American commerce.

[110] The undersigned does not visit upon the imperial government the conduct of its governors toward the Florida and Georgia, well knowing that it will, as heretofore, do its duty in the premises. But the case of the Alabama is a very different one. She has violated the neutrality and outraged the sovereignty of Brazil, by capturing and burning American vessels in Brazilian waters; and if, when Brazil possess the ability, and the opportunity offers, she does not take possession of her, assuredly the government of Brazil assumes the responsibility of her acts, and the United States will be compelled to look for redress to Brazil, as she did to Portugal in the case of the General Armstrong.

The course taken by the United States minister was approved by his Government.

The minister of foreign affairs for the empire of Brazil replied as follows to the complaints of the minister of the United States:[1]

The Marquis d'Abrantes to Mr. Webb.

[Translation.]

MINISTRY OF FOREIGN AFFAIRS,
Rio de Janeiro, May 23, 1863.

I hasten to acknowledge the reception of the note which, under date of the 21st instant, Mr. James Watson Webb, envoy extraordinary and minister plenipotentiary of the United States at this court, has done me the honor to address to me, with a view of calling my attention to a serious violation of neutrality which has been perpetrated, and is now being perpetrated, by two representatives of the imperial government in the ports of Pernambuco and Bahia.

Mr. Webb, in referring to the proceedings of the presidents of said provinces toward the steamers of the Confederate States which come into their ports, accuses said presidents, and complains of their having afforded hospitality to those steamers, and of having permitted them to make repairs, to receive provisions, and to land merchandise of vessels which they had captured.

Mr. Webb bases his complaints on a series of acts which he enumerates, and which he characterizes as violative of the neutrality which the government of His Majesty the Emperor imposes on itself in the deplorable contest of the American Union.

The affair in question is undoubtedly grave and important, and the imperial government gives to the authorized language of Mr. Webb all the consideration which is due to it.

But for this very reason, and Mr. Webb will certainly acknowledge it, the imperial cabinet is under the unavoidable necessity of proceeding in such a delicate matter with the greatest discretion and prudence, in order to observe religiously the position which it has assumed since the manifestation of the first events which tended to the result of a division of the United States.

The position to which I allude Mr. Webb perfectly understands, as he also understands the principles on which it rests, since they were laid down in a circular which was issued by the imperial government to its delegates in the provinces, under date of the 1st of August, 1861.

Conforming to the rules generally admitted among civilized nations, the imperial government in that circular prescribes the practical mode of rendering effective the neutrality which it imposes on itself.

Without at present confirming or denying the acts as set forth by Mr. Webb, and without entering into an appreciation of the observations with which he accompanies the narration of them, what I can at once most positively declare to him is, that the

[1] Appendix, vol. i, p. 283.

government of His Majesty the Emperor is firmly resolved to maintain, and to cause to be respected, the neutrality, in the terms in which it has declared it assumed it, and what is important to declare, that it is not disposed to allow this neutrality to be violated in any way by those interested in the contest, and still less by the delegates of the government itself.

Of the sincerity of this declaration Mr. Webb has an indisputable proof in my note of the 7th instant relative to the steamer Alabama, of the Confederate States, as in it I voluntarily hastened to bring to the knowledge of Mr. Webb not only the official communications which the imperial government has received in regard to the acts committed at Pernambuco by that steamer, but also the resolutions adopted by the government to approve entirely of the proceedings on that occasion of the president referred to, and to resort to the necessary measures to repress the abuses of the captain of the Alabama, and cause the neutrality of the empire to be religiously observed.

Therefore Mr. Webb, certain as he must be of the intentions of the imperial government, and of all the respect which this government pays to his word, will assuredly not be surprised that, before coming to a final decision on the important acts which form the subject of the note with which I am now occupied, the imperial government should hear what their delegates in the provinces have to relate, and should strive scrupulously to verify their exactness.

By the French packet which leaves this port on the 25th instant, the imperial government sends the most positive and conclusive orders to the presidents of Bahia and Pernambuco that, without loss of time, they will circumstantially report in regard to each of the acts alleged in the note of Mr. Webb, of which he gives to them full information.

And, as soon as the reports referred to shall arrive, Mr. Webb may rely that the imperial government will not hesitate to put forth its hand to the means necessary to render effective the neutrality which it imposes on itself, provided it has been violated, and to leave beyond all doubt the fairness of its proceeding.

Flattering myself that this brief answer will tranquilize Mr. Webb, I profit by the occasion, &c..

(Signed) MARQUIS D'ABRANTES.

[111] *The government of Brazil in this note adhered to the position which it had assumed at the commencement of the war by its circular of 1st August, 1861. The circular contained the following passage:[1]

The Confederate States have no recognized existence: but, having constituted a distinct government *de facto*, the imperial government cannot consider their naval armaments as acts of piracy, nor refuse them, with the necessary restrictions, the character of belligerents which they have assumed.

It being alleged, however, and (as it appears) proved, that the Alabama had made prizes within the territorial waters of the island of Fernando de Noronha, and that the governor of that island had taken no steps to prevent this or protest against it, he was deprived of his office by the president of the province; and this act was approved by the Brazilian government. The Alabama remained in the port of Bahia for eight or nine days.

Some further correspondence passed between Mr. Webb and the Brazilian minister of foreign affairs, in the course of which the latter vindicated the conduct of the presidents of the provinces of Pernambuco and Bahia, and declared that, since Brazil had orignally recognized the Confederate States as belligerents, and had not withdrawn that recognition, and the Florida, Georgia, and Alabama bore the flag and commission of those States, these vessels had been rightly treated as belligerent vessels of war. He informed Mr. Webb, however, that since the Alabama appeared to have violated the neutrality of Brazil by using Rata Island as a base of hostile operations, she would not in future be admitted into any Brazilian port.[2]

On or about the 29th July, 1863, the Alabama arrived at Saldanha Bay, on the southwest coast of Africa, and in the vicinity of Cape Town. The consul of the United States at Cape Town, on the 4th August,

[1] Appendix, vol. i, p. 284.

[2] Ibid., pp. 288-300.

1863, addressed the following letter to Sir Philip Wodehouse, governor of the Cape Colony:[1]

UNITED STATES CONSULATE,
Cape Town, August 4, 1863.

SIR: From reliable information received by me, and which you are also doubtless in possession of, a war-steamer called the Alabama is now in Saldanha Bay being painted, discharging prisoners of war, &c.

The vessel in question was built in England, to prey upon the commerce of the United States of America, and escaped therefrom while on her trial trip, forfeiting bonds of £20,000, which the British government exacted under the foreign-enlistment act.

Now, as your government has a treaty of amity and commerce with the United States, and has not recognized the persons in revolt against the United States as a government at all, the vessel alluded to should be at once seized and sent to England, from whence she clandestinely escaped. Assuming that the British government was sincere in exacting the bonds, you have doubtless been instructed to send her home to England, where she belongs. But if, from some oversight, you have not received such instructions, and you decline the responsibility of making the seizure, I would most respectfully protest against the vessel remaining in any port of the colony another day. She has been at Saldanha Bay four [six] days already, and a week previously on the coast, and has forfeited all right to remain an hour longer by this breach of neutrality. Painting a ship does not come under the head of "necessary repairs," and is no proof that she is unseaworthy; and to allow her to visit other ports after she has set the Queen's proclamation of neutrality at defiance, would not be regarded as in accordance with the spirit and purpose of that document.

Yours, &c.,
(Signed) WALTER GRAHAM,
United States Consul.

His Excellency SIR PHILIP E. WODEHOUSE.

The statement in this letter that bonds had been exacted and forfeited was entirely erroneous. No such bonds had been given or forfeited, nor could they have been required by British law. The consul's letter was answered as follows:[2]

COLONIAL OFFICE, *August 5*, 1863.

SIR: I am directed by the governor to acknowledge the receipt of your letter of yesterday's date, relative to the Alabama.

His excellency has no instructions, neither has he any authority to seize or detain that vessel; and he desires me to acquaint you that he has received a letter from the commander, dated the 1st instant, stating that repairs were in progress, and as soon as they were completed he intended to go to sea. He further announces his intention of respecting strictly the neutrality of the British government.

The course which Captain Semmes here proposes to take is, in the governor's opinion, in conformity with the instructions he has himself received relative to ships of
[112] war and privateers belonging to the *United States and the States calling themselves the Confederate States of America visiting British ports.

The reports received from Saldanha Bay induce the governor to believe that the vessel will leave that harbor as soon as her repairs are completed; but he will, immediately on receiving intelligence to the contrary, take the necessary steps for enforcing the observance of the rules laid down by Her Majesty's government.

I have, &c.,
(Signed) L. ADAMSON,
For the Colonial Secretary.

The facts which occurred, and the questions which arose, while the Alabama remained within the limits of the Cape Colony, are stated in the following dispatch, addressed by the governor to Her Majesty's secretary of state for the colonies:[3]

Governor Sir P. Wodehouse to the Duke of Newcastle.

[Extract.]

GOVERNMENT HOUSE,
Cape Town, August 19, 1863.

I beg to take this opportunity of making your grace acquainted with what has occurred here in connection with the visit of the Confederate States steamer Alabama.

[1] Appendix, vol. i, p. 300. [2] Ibid., p. 301. [3] Ibid., p. 312.

On Tuesday the 14th instant I received a letter from the commander of that vessel, dated the 1st August, at Saldanha Bay, announcing his having entered that bay with a view to effecting certain repairs, and stating that he would put to sea as soon as they were completed, and would strictly respect our neutrality.

When this intelligence was received the United States consul called on me to seize her, or at any rate to send her away instantly; but as the vessel which brought the news reported that the Alabama was coming immediately to Table Bay, I replied that I could not seize her, but would take care to enforce the observance of the neutral regulations.

On the next day, about noon, it was reported from the signal station that the Alabama was steering for Table Bay from the north, and that a Federal bark was coming in from the westward; and soon after, that the latter had been captured and put about. A little after 2 p. m. the United States consul called to state that he had seen the capture effected within British waters; when I told him he must make his statement in writing, and an investigation should be made. I also, by telegram, immediately requested the naval commander-in-chief to send a ship of war from Simon's Bay. The Alabama, leaving her prize outside, anchored in the bay at 3.30 p. m., when Captain Semmes wrote to me that he wanted supplies and repairs, as well as permission to land thirty-three prisoners. After communicating with the United States consul, I authorized the latter, and called upon him to state the nature and extent of his wants, that I might be enabled to judge of the time he ought to remain in port. The same afternoon he promised to send the next morning a list of the stores needed, and announced his intention of proceeding with all dispatch to Simon's Bay to effect his repairs there. The next morning (6th August) the paymaster called on me with the merchant who was to furnish the supplies, and I granted him leave to stay till noon of the 7th.

On the night of the 5th Her Majesty's ship Valorous had come round from Simon's Bay. During the night of the 6th the weather became unfavorable; a vessel was wrecked in the bay, and a heavy sea prevented the Alabama from receiving her supplies by the time arranged. On the morning of the 8th, Captain Forsyth, of the Valorous, and the port-captain, by my desire, pressed on Captain Semmes the necessity for his leaving the port without any unnecessary delay; when he pleaded the continued heavy sea and the absence of his cooking apparatus, which had been sent on shore for repairs and had not been returned by the tradesman at the time appointed, and intimated his own anxiety to get away. Between 6 and 7 a. m. on Sunday the 9th he sailed, and on his way round to Simon's Bay captured another vessel, but, on finding that she was in neutral waters, immediately released her.

In the mean time the United States consul had, on the 5th August, addressed to me a written statement, that the Federal bark Sea Bride had been taken "about four miles from the nearest land," and "already in British waters;" on which I promised immediate inquiry. The next day the consul repeated his protest, supporting it by an affidavit of the master of the prize, which he held to show that she had been taken about two miles and a half from the land; and the agent for the United States underwriters, on the same day, made a similar protest. On the 7th the consul represented that the prize had, on the previous day, been brought within one mile and a half of the light-house, which he considered as much a violation of the neutrality as if she had been there captured, and asked me to have the prize-crew taken out, and replaced by one from the Valorous, which I declined.

I had, during this period, been seeking for authentic information as to the real circumstances of the capture, more particularly with reference to the actual distance from the shore, and obtained, through the acting attorney-general, statements from the keeper of the Green Point light-house, (this was supported by the collector of customs,) from the signalman at the station on the Lion's Rump, and from an experienced boatman who was passing between the shore and the vessels at the time. Captain Forsyth, of the Valorous, also made inquiries of the captain of the Alabama, and of the port-captain, and made known the result to me; and from all these statements I came to the conclusion that the vessels were not less than four miles distant from land; and on the 8th I communicated to the United States consul that the capture could not, in my opinion, be held to be illegal by reason of the place at which it was effected.

[113] *In his reply of the 10th, the consul endeavored to show how indefensible my decision must be, if, in these days of improved artillery, I rested it on the fact of the vessels having been only three miles from land. This passage is, I think, of considerable importance, as involving an indirect admission that they were not within three miles at the time of capture; and I hope your grace will concur in my view that it was not my duty to go beyond what I found to be the distance clearly established by past decisions under international law.

An important question has arisen in connection with the Alabama, on which it is very desirable that I should, as soon as practicable, be made acquainted with the views of Her Majesty's government. Captain Semmes had mentioned, after his arrival in port, that he had left outside one of his prizes previously taken, the Tuscaloosa, which he had equipped and fitted as a tender, and had ordered to meet him in Simon's

Bay, as she also stood in need of supplies. When this became known to the naval commander-in-chief, he requested me to furnish him with a legal opinion; and whether this vessel could be held to be a ship of war before she had been formally condemned in a prize-court; or whether she must not be held to be still a prize, and as such prohibited from entering our ports. The acting attorney-general, founding his opinion on Earl Russell's dispatch to your grace of the 31st January, 1862, and on Wheaton's "International Law," stated in substance that it was open to Captain Semmes to convert this vessel into a ship of war, and that she ought to be admitted into our ports on that footing.

On the 8th August the vessel entered Simon's Bay, and the admiral wrote that she had two small rifled guns with a crew of ten men, and that her cargo of wool was still on board. He was still doubtful of the propriety of admitting her.

On the 10th August, after further consultation with the acting attorney-general, I informed Sir Baldwin Walker that, if the guns had been put on board by the Alabama, or if she had a commission of war, or if she were commanded by an officer of the confederate navy, there must be held to be a sufficient setting forth as a vessel of war to justify her admission into port in that character.

The admiral replied in the affirmative on the first and last points, and she was admitted.

The Tuscaloosa sailed from Simon's Bay on the morning of the 14th instant, but was becalmed in the vicinity until the following day, when she sailed about noon. The Alabama left before noon on the 15th instant. Neither of these vessels was allowed to remain in port longer than was really necessary for the completion of their repairs.

On the 16th, at noon, the Georgia, another confederate war-steamer, arrived at Simon's Bay in need of repairs, and is still there.

Before closing this dispatch, I wish particularly to request instructions on a point touched on in the letter from the United States consul of the 17th instant, viz, the steps which should be taken here in the event of the cargo of any vessel captured by one of the belligerents being taken out of the prize at sea, and brought into one of our ports in a British or other neutral vessel.

Both belligerents are strictly interdicted from bringing their prizes into British ports by Earl Russell's letter to the lords of the admiralty of the 1st June, 1861, and I conceive that a colonial government would be justified in enforcing compliance with that order by any means at its command, and by the exercise of force if it should be required.

But that letter refers only to "prizes," that is, I conceive, to the ships themselves, and makes no mention of the cargoes they may contain. Practically, the prohibition has been taken to extend to the cargoes; and I gathered, from a conversation with Captain Semmes on the subject of our neutrality regulations, that he considered himself debarred from disposing of them, and was thus driven to the destruction of all that he took. But I confess that I am unable to discover by what legal means I could prevent the introduction into our ports of captured property purchased at sea, and tendered for entry at the custom-house, in the usual form, from a neutral ship. I have consulted the acting attorney-general on the subject, and he is not prepared to state that the customs authorities would be justified in making a seizure under such circumstances; and therefore, as there is great probability of clandestine attempts being made to introduce cargoes of this description, I shall be glad to be favored with the earliest practicable intimation of the views of Her Majesty's government on the subject.

The allegation that the capture of the Sea Bride had taken place within the territorial waters of the colony was ascertained by clear proof to be erroneous.

The questions stated in the dispatch of Sir P. Wodehouse were referred to the law-officers of the Crown, who reported on them as follows:[1]

Opinion.

LINCOLN'S INN, *October* 19, 1863.

MY LORD: We are honored with your lordship's commands, signified in Mr. Hammond's letter of the 30th September ultimo, stating that he was directed by your lordship to transmit to us the accompanying letters and their inclosures from the admiralty and colonial office, dated respectively the 26th and 29th September ultimo, relative to the proceedings at the Cape of Good Hope of the confederate vessels of war Georgia, Alabama, and her reputed tender Tuscaloosa; and to request that we would take the various questions raised in these papers, and especially the opinion

[1] Appendix, vol. i, p. 322.

given by the acting attorney-general of that colony with regard to the latter vessel, into our consideration, and favor your lordship with such observations as we might have to make thereupon.

We are also honored with your lordship's commands signified in Mr. Hammond's letter of the 2d October instant, stating that, with reference to his letter of the 30th
[114] ultimo, he was directed by your lordship to transmit to us the accompanying letter, dated the 29th September ultimo, from Mr. Adams, relative to the proceedings of the Alabama off the Cape of Good Hope, and to request that we would take the same into our consideration, together with papers on this subject then before us, and favor your lordship with our opinion thereupon.

In obedience to your lordship's commands we have taken these papers into consideration, and have the honor to report—

That, so far as relates to the capture of the Sea Bride made by the Alabama, it appears, as we understand the evidence, to have been effected beyond the distance of three miles from the shore; and, as we have already had the honor to report to your lordship, that distance must be accepted as the limit of territorial jurisdiction, according to the present rule of international law upon that subject. It appears, however, that this prize, very soon after her capture, was brought within the distance of two miles from the shore; and as this was contrary to Her Majesty's orders, it might have afforded just grounds (if the apology of Captain Semmes for this improper act, which he ascribed to inadvertence, had not been accepted by Sir Philip Wodehouse) for the interference of the authorities of the Cape Colony upon the principles which we are about to explain.

Secondly, with respect to the Alabama herself, we are clearly of opinion that neither the governor nor any other authority at the Cape could exercise any jurisdiction over her; and that, whatever was her previous history, they were bound to treat her as a ship of war belonging to a belligerent power.

Upon the third point raised with regard to the vessel called the Tuscaloosa, we are not able to agree with the opinion expressed by the attorney-general of the Cape Colony, that she had ceased to have the character of a prize captured by the Alabama merely because she was, at the time of her being brought within British waters, armed with two small guns, in charge of an officer, and manned with a crew of ten men from the Alabama, and used as a tender to that vessel, under the authority of Captain Semmes.

It would appear that the Tuscaloosa is a bark of 500 tons, captured by the Alabama off the coast of Brazil on the 21st of June last, and brought into Simon's Bay on or before the 7th of August, with her original cargo of wool (itself, as well as the vessel, prize) still on board, and with nothing to give her a warlike character (so far as appears from the papers before us) except the circumstances already noticed.

We therefore do not feel called upon, in the circumstances of this case, to enter into the question whether, in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent government, without being first brought *infra præsidia* or condemned by a court of prize, the character of prize, within the meaning of Her Majesty's orders, would or would not be merged in that of a national ship of war. It is enough to say that the citation from Mr. Wheaton's book by the colonial attorney-general does not appear to us to have any direct bearing upon this question.

Connected with this subject is the question as to the cargoes of captured vessels, which is noticed at the end of Sir Philip Wodehouse's dispatch of the 19th August last. We think that, according to the true interpretation of Her Majesty's orders, they apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves; they do not, however, apply to any articles which may have formed part of any such cargoes, if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

We think it right to observe that the third reason alleged by the colonial attorney-general for his opinion assumes (though the fact had not been made the subject of any inquiry) that "no means existed for determining whether the ship had or had not been judicially condemned in a court of competent jurisdiction;" and the proposition that, "*admitting her to have been captured by a ship of war of the Confederate States*, she was entitled to refer Her Majesty's government, in case of dispute, to the court of her States, in order to satisfy it as to her real character," appears to us to be at variance with Her Majesty's undoubted right to determine, within her own territory, whether her orders, made in vindication of her own neutrality, have been violated or not.

The question remains, what course ought to have been taken by the authorities at the Cape, first, in order to ascertain whether this vessel was, as alleged by the United States consul, an uncondemned prize, brought within British waters in violation of Her Majesty's neutrality; and secondly, what ought to have been done if such had appeared to be really the fact? We think that the allegations of the United States consul ought to have been brought to the knowledge of Captain Semmes while the

Tuscaloosa was still within British waters; and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the Tuscaloosa's papers. If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of Her Majesty's orders, made for the purpose of maintaining her neutrality, it would, we think, deserve very serious consideration whether the mode of proceeding in such circumstances, most consistent with Her Majesty's dignity and most proper for the vindication of her territorial rights, would not have been to prohibit the exercise of any further control over the Tuscaloosa by the captors, and to retain that vessel under Her Majesty's control and jurisdiction until properly reclaimed by her original owners.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Instructions in accordance with this opinion were accordingly sent to Sir P. Wodehouse.[1]

[115] *In connection with the above correspondence it may be convenient to state here the subsequent history of the Tuscaloosa.

The question which arose as to this ship was not whether there had been a violation of the law of nations or of Her Majesty's neutrality, but whether the orders issued by Her Majesty's government, that no prizes should be suffered to be brought into ports within Her Majesty's dominions, had or had not been infringed. This again depended on the question whether the Tuscaloosa had or had not been divested of the character of a prize. The governor of the Cape Colony was advised that she had, and he accordingly permitted her to depart. Her Majesty's government was advised that she had not. She returned to Simon's Bay on the 26th December, 1863, and was then seized by the rear-admiral commanding on the station, with the concurrence of the governor.[2] Directions were subsequently sent by Her Majesty's government that she should be restored to her commander, Lieutenant Low, on the special ground that, having been once allowed to enter and leave the port, he was fairly entitled to assume that he might do so a second time.[3] She was not, however, actually given up; Lieutenant Low having left the Cape at the time, and there being no one to receive her. At the conclusion of the war she was handed over to the consul of the United States as the representative of her original owners.[4]

A further question afterward arose respecting certain goods which had been imported by a French ship into the Mauritius, and had been claimed by the United States consul there, on the ground that they had formed part of the cargo captured by the Alabama in the Sea Bride. This question having been referred to the law-officers of the Crown, they reported on it as follows:[5]

The law-officers of the Crown to Earl Russell.

LINCOLN'S INN, *May* 11, 1864.

MY LORD: We are honored with your lordship's commands signified in Mr. Murray's letter of the 5th instant, stating that he was directed by your lordship to transmit to us the papers as marked in the margin, respecting some goods which had been brought to the Mauritius in the French bark Sirène, and for the detention of which application was made by the United States consul to the governor of the colony, on the ground that they had formed part of the cargo of the confederate prize Sea Bride; and Mr. Murray stated that we should observe from the letter from the colonial office of the 5th instant, that Mr. Secretary Cardwell is of opinion that, as the question of the general instructions to be issued to the governors of Her Majesty's colonies was brought under our consideration in Mr. Layard's letter of the 16th ultimo, it is desirable that we should also have before us the papers now sent to us, relative to the dis-

[1] Appendix, vol. i, p. 327. [2] Ibid., pp. 330–342. [3] Ibid., pp. 342–344.
[4] Ibid., p. 363. [5] Ibid., p. 356.

posal of the cargoes of prize vessels brought into a colonial port in British or other neutral vessels; and Mr. Murray was accordingly to request that we would take these papers into consideration, together with those lately before us, and embody in the proposed instructions to the colonial governors such directions as we may consider advisable on this particular head.

In obedience to your lordship's commands we have taken these papers into consideration, and have the honor to report that, after considering these papers, it does not appear to us to be necessary to make any change in, or addition to, the draught instructions prepared by us, pursuant to the request conveyed in Mr. Layard's letter of the 16th ultimo.

Questions such as that lately raised at the Mauritius by the United States consul with respect to the cargo of the Sea Bride, must be left, in our opinion, to the civil tribunals. The executive government has no authority to disregard or call in question the *prima facie* title, evidenced by possession, of a private non-belligerent person who brings property of this description into a neutral port, whether he be a foreigner or a British subject. And there is no foundation in law for the idea that a valid title cannot be made to property taken in war, by enemy from enemy, without a prior sentence of condemnation.

The absence of such a sentence may be material when the question is whether captured goods, brought by a belligerent ship of war, exempt from civil jurisdiction, into a neutral port from which prizes are excluded, ought to be regarded by the neutral government as still having the character of prize; but this is altogether different from a mere question of property in the goods themselves.

We have, &c.,
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

It has been previously stated that the Alabama sailed from Simon's Bay on the 15th August. On the 16th September she returned thither,[1] and soon afterward sailed for the Indian Seas. The United States war-steamer Vanderbilt had, in the interval, visited both Cape Town and Simon's Bay, coaled, and departed for the Mauritius. She had previously coaled at St. Helena, and at the Mauritius she obtained
[116] a renewed supply. The *Alabama touched and coaled at Singapore on or about the 21st of December, 1863; returned a second time to the Cape of Good Hope on the 20th of March, 1864;[2] and thence proceeded to Europe, anchoring, on the 11th June, 1863, in the port of Cherbourg. The United States minister at Paris, Mr. Dayton, protested in writing against her being received into a French port.[3] She was, however, admitted, and suffered to coal and to make such repairs as might be necessary, but did not obtain permission to enter the government docks.

On the 19th June, 1864, she engaged the United States war-steamer Kearsarge, off the coast of France, and was sunk, after an action lasting about an hour. Some of her officers and crew were picked up and saved by an English yacht which happened to be near at hand, and some by a French pilot-boat.

With reference to this incident some correspondence passed between Mr. Adams and the government of Her Britannic Majesty, Mr. Adams erroneously contending that it was the duty of the owner of the yacht to surrender the persons whom he had picked up to the captain of the Kearsarge. To the representations made on this subject Earl Russell replied:[4]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *June* 27, 1864.

SIR: I have the honor to acknowledge the receipt of your note of the 25th instant, complaining of the interference of a British vessel, the Deerhound, with a view to aid in effecting the escape of a number of persons belonging to the Alabama, who you

[1] Appendix, vol. i, p. 325.
[2] Ibid., p. 372.
[3] Ibid., p. 376.
[4] Ibid., p. 380.

state had already surrendered themselves prisoners of war, and calling my attention to the remarkable proportion of officers and American insurgents, as compared with the whole number of persons rescued from the waves. You state further that you can scarcely entertain a doubt that this selection was made by British subjects with a view to connive at the escape of these particular individuals from captivity.

I have the honor to state to you, in reply, that it appears to me that the owner of the Deerhound, of the royal yacht squadron, performed only a common duty of humanity in saving from the waves the captain and several of the crew of the Alabama. They would otherwise, in all probability, have been drowned, and thus would never have been in the situation of prisoners of war.

It does not appear to me to be any part of the duty of a neutral to assist in making prisoners of war for one of the belligerents.

I shall, however, transmit to the owner of the Deerhound a copy of your letter and its inclosures, together with a copy of this letter.

I am, &c.,
(Signed) RUSSELL.

The following correspondence also passed between the captain of the Kearsarge and M. Bonfils, who is stated to have been an agent, in France, of the government of the Confederate States:[1]

Captain Winslow, United States Navy, to M. Bonfils.

UNITED STATES STEAMSHIP KEARSARGE, *le 21 juin*, 1871.

MONSIEUR: Certains canots de pilots, auxquels j'avais permis, par humanité, de sauver plusieurs prisonniers lorsque l'Alabama eût sombré, les ont amenés à Cherbourg. Ces officiers et hommes d'équipage n'en sont pas moins soumis aux obligations que la loi de la guerre impose; ils sont mes prisonniers, et je demande qu'ils se rendent à bord du Kearsarge pour s'y constituer prisonniers. Dans le cas qu'ils chercheraient à se délier de cette obligation à la faveur des moyens qui ont été employés, dans des cas semblables qui pourraient se présenter ils ne doivent plus attendre aucune clémence.

(Signé) JNO. A. WINSLOW.

M. Bonfils to Captain Winslow, United States Navy.

MONSIEUR: J'ai reçu votre lettre du 21 juin. L'objet de votre réclamation est un de ceux sur lesquels je n'exerce aucun contrôle, et je vous ferai remarquer que votre demande aurait du être addressée au gouvernement français, chez lequel ces malheureux ont trouvé refuge.

Je ne connais aucune loi de la guerre qui empêche un soldat de s'échapper d'un champ de bataille après un revers, lors même qu'il aurait été déjà fait prisonnier, et je ne vois pas pourquoi un marin n'en pourrait pas faire autant à la nage. Je dois refuser d'agir comme votre intermédiaire auprès de certaines personnes que vous ne nommez même pas, et que néanmoins vous réclamez comme étant vos prisonniers.

Je ne puis non plus comprendre comment les autorités des États-Unis peuvent prétendre retenir des prisonniers dans les limites de l'empire français.

Je suis, &c.,
(Signé) BONFILS.

[117] *After the original departure of the Alabama from Liverpool, many communications were from time to time addressed by Mr. Adams to Her Majesty's government, in which he dwelt on the circumstances that the vessel was built in England, and subsequently received her armament from England; that coal and supplies had also been procured for her from England; that many of her crew were British subjects, and that their wages were paid to their wives and families in England, through merchants resident at Liverpool. These circumstances were repeatedly referred to by Mr. Adams; and, in a letter inclosed by him to Earl Russell, dated the 11th January, 1864,[2] and written by Mr. Dudley, they were enumerated as proving that the Alabama ought to be deemed a British ship, and her acts piratical. The law-officers of the Crown were requested to advise the government whether any proceedings could be taken with reference to the supposed breaches of neutrality alleged by Mr. Adams and Mr. Dudley, and they reported as follows:[3]

[1] Appendix, vol. i, p. 390. [2] Ibid., p. 226. [3] Ibid., p. 235.

Opinion of law-officers.

We are of opinion that no proceedings can at present be taken with reference to any of the matters alleged as breaches of neutrality in the accompanying printed papers.

If the persons alleged to be Englishmen or Irishmen who have been serving on board the Alabama are natural-born British subjects, they are undoubtedly offenders against the foreign-enlistment act. But, not being (so far as it appears) within British jurisdiction, no proceedings can now be taken against them: and it is, under these circumstances, unnecessary to enter into the question of the sufficiency or insufficiency, in other respects, of the evidence against them contained in John Latham's affidavit of the 8th January last. Whether any acts were done within the United Kingdom to induce all or any of these persons to enlist in the confederate service, or to go abroad for that purpose, which would be punishable under the foreign-enlistment act, is a question on which these papers throw little or no light; certainly they furnish no evidence of any such acts against any persons or person now within British jurisdiction, on which any proceedings could possibly be taken under that statute.

So far as relates to the supply of coals or other provisions or stores to the Alabama, and the payments made to relatives of seamen or others serving on board that ship by persons resident in the country, we are not aware of any law by which such acts are prohibited, and therefore no proceedings can be taken against any person on that account.

So far as relates to Mr. Dudley's argument (not now for the first time advanced) that the Alabama is an English piratical craft, it might have been enough to say that Mr. Dudley, while he enumerates almost everything which is immaterial, omits everything that is material, to constitute that character. The character of an English pirate cannot possibly belong to a vessel armed and commissioned as a public ship of war by the Confederate States, and commanded by an officer belonging to the navy of those States, under their authority. Such the Alabama undoubtedly is, and has been, ever since she first hoisted the confederate flag, and received her armament at Terceira. Even by the schedule of John Latham's affidavit, in which he describes the greater part of her petty-officers and seamen (on what evidence we know not) as Englishmen or Irishmen, it appears that twenty out of the twenty-five superior officers (as well as the captain) are not so described; and of these twenty officers one is stated to be the brother-in-law of the President of the Confederate States. It is to be regretted that, in any of the discussions on this subject, so manifest an abuse of language as the application of the term "English piratical craft" to the Alabama should still be permitted to continue.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.

SUMMARY.

The Alabama was built at Birkenhead by a ship-building firm which had for a long time carried on a very extensive business. The building of ships of war required for the use of foreign governments, and ordered by such governments directly or through agents, had formed a part of the ordinary business of the firm. It has been alleged that one of the members of the firm was a member of the House of Commons. This allegation, if it were true, would be immaterial; but Her Majesty's government has been informed and believes that it was not true, and that Mr. John Laird, who was member of Parliament for Birkenhead, and had formerly been a partner in the business, had ceased to be so before the building of the Alabama. The vessel appears to have been completed by the builders for delivery in the port of Liverpool, and to have been delivered accordingly; and Her Majesty's government sees no reason to doubt that the building and delivery of the vessel were, so far as the builders were concerned, transactions in the ordinary course
[118] *of their business, though they probably knew, and did not disclose, the employment for which she was intended by the person or persons to whose order she had been built.

The general construction of the vessel was such as to make it apparent that she was intended for war and not for commerce.

The attention of Mr. Dudley had been called to this vessel in November, 1861, by his predecessor in office. The attention of Her Britannic Majesty's government was for the first time directed to her by Mr. Adams, in a note received on the 24th of June, 1862.

Mr. Adams's communication was referred immediately to the law-officers of the Crown. Inquiries were directed to be forthwith instituted at Liverpool, and such inquiries were instituted and prosecuted accordingly. Mr. Adams was at the same time requested to instruct the United States consul at Liverpool to submit such evidence as he might possess, tending to show that his suspicions as to the destination of the vessel were well founded, to the collector of customs at that port.

In order to enable Her Majesty's government to justify and support a seizure of the vessel, it was necessary that the government should have reasonable evidence, not only that she had been or was being equipped, armed, or fitted out for war, but also that she was so equipped, armed, or fitted out with the intention that she should be used to cruise or commit hostilities against the United States.

Admissible and material evidence, tending to prove the existence of such an unlawful intention, was for the first time obtained by the customs officers at Liverpool on the 21st July, 1862, and came into the possession of Her Majesty's government on the following day. This evidence, however, though admissible and material, was very scanty, consisting in reality of the testimony of one witness, who stated facts within his own knowledge, that of the other deponents being wholly or chiefly hearsay. Further testimony was obtained on the 23d July, and additional evidence on the 25th July.

It was the right and duty of Her Majesty's government to inform its judgment as to the credibility and sufficiency of the evidence obtained as aforesaid, by consulting its official legal advisers. Nor can any reasonable time taken by the advisers of the government for deliberation, especially when additional materials were being daily received and sent to them, be a ground for imputing want of due diligence to Her Majesty's government. One of Her Majesty's ordinary legal advisers, the Queen's advocate, now deceased, was at that time seriously ill of a malady from which he never recovered, and this was mentioned at the time (on the 31st July, 1862) by Lord Russell to Mr. Adams, as a circumstance which had occasionnd some delay.[1]

All the evidence obtained as aforesaid was in fact referred by the government as soon as obtained, with the utmost expedition, to its legal advisers.

The advisers of the government, on the 29th July, reported their opinion that the evidence was sufficient to justify a seizure of the vessel.

On the day on which this opinion was given, and before it could be reported to the government, the Alabama put to sea. She had not been registered, and the application for a clearance, which is usual in the case of ships leaving port, had not been made, and the intention to carry her to sea was concealed by means of an artifice.

The destination of the vessel, and the course which she would take after putting to sea, were entirely unknown, except to the persons immediately concerned in dispatching her. Orders for arresting her were, however, sent by the government to various places at which she might probably touch after leaving Liverpool, and to Nassau.

The Alabama sailed from England wholly unarmed, and with a crew hired to work the ship and not enlisted for the confederate service. She

[1] Appendix, vol. 1, p. 249.

received her armament at a distance of more than a thousand miles from England, and was armed for war, not within the dominions of Her Majesty, but either in Portuguese waters or on the high seas.

The guns and ammunition which were put on board the Alabama off Terceira had been procured and exported from England in an ordinary merchant-steamer, which loaded them as cargo and sailed with a regular clearance for Nassau.

The Alabama was commissioned by the government of the Confederate States, and commanded and officered by American citizens. Of the crew a considerable number were British subjects, who were induced by persuasion and promises of reward to take service in her while she was off Terceira. Others were American citizens, and the proportion which these bore to the rest increased during her cruise.

After having been armed and commissioned as a ship of war of the Confederate States, the Alabama was admitted in that character into ports of all the countries visited by her, among which were several of the colonies of Great Britain. In these she was received on the same footing as elsewhere, without favor or partiality.

No serious endeavor to capture the Alabama appears to have been made on the part of the Government of the United States. The [119] Tuscarora, which had been summoned by Mr. Adams to an English port in order to intercept her on her departure, failed to do so, apparently through the remissness of the Tuscarora's commander. During the whole cruise, which lasted nearly two years, and until she sailed from the port of Cherbourg to engage the Kearsarge, she was only encountered twice by United States ships; once in the Gulf of Mexico, when she voluntarily provoked an action and sunk her opponent, and a second time when she eluded the pursuit of the San Jacinto, at Martinique.

Her Britannic Majesty's government cannot admit that, in respect of the Alabama, it is justly chargeable with any failure of international duty, for which reparation is due from Great Britain to the United States.

PART VII.

STATEMENT OF FACTS RELATIVE TO THE GEORGIA.

PART VII.—The Georgia.

On the 8th April, 1863, Mr. Adams addressed to Earl Russell a note respecting a steam-vessel, built in Dumbarton, in Scotland, and at first known as the Japan, but subsequently as the Georgia.

This vessel had put to sea six days before the date of Mr. Adams's note, and was at that date out of the Queen's dominions. No information whatever relating to her had previously reached Her Majesty's government. Mr. Adams's note was as follows:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, April 8, 1863.

MY LORD: From information received at this legation, which appears entitled to credit, I am compelled to the painful conclusion that a steam-vessel has just departed from the Clyde with the intent to depredate on the commerce of the people of the United States. She passed there under the name of the Japan, but is since believed to have assumed the name of the Virginia. Her immediate destination is the island of Alderney, where it is supposed she may yet be at this moment. A small steamer called the Alar, belonging to Newhaven, and commanded by Henry P. Maples, has been loaded with a large supply of guns, shells, shot, powder, &c., intended for the equipment of the Virginia, and is either on the way or has arrived there. It is further alleged that a considerable number of British subjects have been enlisted at Liverpool, and sent to serve on board this cruiser.

Should it be yet in the power of Her Majesty's government to institute some inquiry into the nature of these proceedings, in season to establish their character if innocent, or to put a stop to them if criminal, I feel sure that it would be removing a heavy burden of anxiety from the minds of my countrymen in the United States.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

From dispatches addressed by Mr. Adams and Mr. Dudley to their own Government, it appears that the consuls of the United States at Glasgow and Liverpool, and Mr. Adams himself, had for a long time been in possession of information respecting this vessel, and that she had long been an object of suspicion to them. Mr. Adams, on the 9th April, 1863, wrote as follows to Mr. Seward:

Lastly, comes the case of the Japan, *alias* the Virginia. I have been long in the possession of information about the construction and outfit of that vessel on the Clyde, but nothing has ever been furnished to me of a nature to base proceedings upon. Learning, however, that she had gone to the island of Alderney to take her armament there, I made up my mind to send notice of it to the British government, and leave it to them to act in the case as they might think fit.

Mr. Dudley, on the 3d April, had written as follows to Mr. Seward:

Mr. Underwood, our consul at Glasgow, has no doubt informed you about the steamer now called the Japan, formerly the Virginia, which is about to clear from this port for the East Indies. Some seventy or eighty men, twice the number that would be required for any legitimate voyage, were shipped at Liverpool for this vessel, and sent to Greenock on Monday evening last. They are shipped for a voyage of three years. My

[1] Appendix, vol. i, p. 359.

belief is that she belongs to the confederates, and is to be converted into a privateer; quite likely to cruise in the East Indies as Mr. Young, the paymaster from the Alabama, tells me it has always been a favorite idea of Mr. Mallory, the secretary of the confederate navy, to send a privateer in these waters. I sent a man from here to Glasgow to accompany these men, to endeavor to find out the destination of the vessel, &c. He has not been successful yet in his efforts. He has been on board, and writes that she has no armament, and he is still there watching her.

No communication respecting this vessel was made to Her Majesty's government until the 8th April, six days after her departure from British waters.

The receipt of Mr. Adams's note of the 8th April was unofficially acknowledged by Mr. Hammond, one of the under-secretaries of state for foreign affairs, as follows:[1]

Mr. Hammond to Mr. Adams.

[Private.] FOREIGN OFFICE, *April* 8, 1863.

MY DEAR SIR: I found your immediate letter on my arrival at the office at 12.45, and as your mail goes, I believe, to-day, you may like to know at once that within
[121] half an hour of that time it was sent to the *home office, within whose particular jurisdiction are the Channel Islands. A copy will also be sent to the treasury as soon as it can be made.

You shall have an official acknowledgment of your letter as soon as I can get Lord Russell's signature, but he is out of town.

Very faithfully, &c.,
(Signed) E. HAMMOND.

Copies of Mr. Adams's note were, on the same day, sent to the home office and the treasury, and those departments were requested to adopt, without delay, the measures most suitable for ascertaining the correctness of the report, and, if it should prove to be well founded, then to take the most effectual measures allowed by law for defeating the alleged attempt to fit out a belligerent vessel from a British port, and for bringing to justice all persons connected with the vessel who might have rendered themselves amenable to the law.

In pursuance of this request, the following letter was addressed by the under-secretary of state for the home department to the lieutenant-governor of Guernsey:[2]

Mr. Waddington to Major-General Slade.

WHITEHALL, *April* 8, 1863.

SIR: I am directed by Sir George Grey to transmit to you herewith, as received through the foreign office, a copy of a letter from the United States minister at this court, respecting a steam-vessel named either the Japan or the Virginia, reported to have left the Clyde for Alderney, where she is to receive on board an armament conveyed to that island by a small steamer, the Alar, belonging to Newhaven, and is to be eventually employed in hostilities against the United States; and I am to request that you will make immediate inquiry into the truth of the allegations contained in that communication.

I have to call your attention to the statute 59 Geo. III. cap. 69. Section 7 appears to be applicable to this case, if the information which has been given to the minister of the United States of America should turn out to be correct. In that case the law-officers of the Crown should be instructed to take without delay the proper proceedings authorized by the law of Alderney, to enforce the provisions of the act in question, and the officers of customs may be called upon to assist, if necessary.

Sir George Grey will be glad to be informed of the result of the inquiry, and of any steps that may be taken in consequence.

I have, &c.,
(Signed) H. WADDINGTON.

The lieutenant-governor, on receiving these instructions, desired

[1] Appendix, vol. i, p. 399. [2] Ibid., p. 401.

Captain de Saumarez, commanding Her Majesty's ship Dasher, to proceed at once to Alderney. It was found, however, that Mr. Adams's information as to the immediate destination of the two vessels mentioned in his note was erroneous.

The commissioners of customs were, on the same day, (8th June,) directed by the lords commissioners of the treasury to instruct their officers at Alderney to co operate with the lieutenant-governor of Guernsey. This order was forthwith executed, and the commissioners wrote to the same effect to their officers at Guernsey. They likewise instructed the collectors of customs at Greenock and Glasgow to report all the information which they might be able to obtain respecting the Japan.

The collector at Greenock reported as follows:[1]

Mr. Hodder to commissioner of customs.

CUSTOM-HOUSE, *Greenock, April* 10, 1863.

HONORABLE SIR: With reference to the board's commands signified by Mr. Gardner's letter of yesterday's date, directing me to report to the board all the particulars I may be enabled to ascertain respecting a vessel called the Japan or Virginia, which it is alleged has recently sailed from the Clyde, to be employed against ships of the United States, I beg to report an iron vessel named the Japan, Thomas Hitchcock master, registered at Liverpool as 427 tons, official No. 45868, was built at Dumbarton and measured by the measuring officer at Glasgow, came down the river and proceeded to Gareloch Head, to adjust her compasses, and afterward brought up at the Tail of the Bank, where she remained three or four days. This vessel was, on the 31st ultimo, entered outward by Colin S. Caird, for Point de Galle and Hong-Kong, with a crew of forty-eight men. On the 1st instant she shipped the under-mentioned bonded stores, which were sent from Liverpool, viz: 115 gallons of spirits, 32 gallons of wine, 244 pounds of tea, 590 pounds of coffee, 212 pounds of tobacco, 10 pounds cigars, 18 cwt. 3 quarters 2 pounds of sugar, 2 cwt. 2 quarters 8 pounds of molasses, 2 cwt. 1 quarter 5 pounds of raisins, and 1 cwt. 1 quarter 8 pounds of currants; and cleared the same day in ballast for Point de Galle and Hong-Kong.

It appears she left the anchorage at the Tail of the Bank early on the morning of the 2d instant, with the ostensible purpose of trying her engines, intending to return, having on board several joiners who were fitting up her cabins, and I am informed that
[122] after she left this the joiners were employed in *fitting up a magazine on board, and were subsequently landed on some part of the coast lower down the Clyde.

It is reported that she did not take her final departure until the 6th or 7th instant: but I cannot ascertain where she went after leaving this anchorage.

I have questioned the officer who performs tide-surveyor's duty afloat, and who visited her on the evening of the 1st instant, to see that the stores were correct. He informs me he saw nothing on board which could lead him to suspect that she was intended for war purposes. I can testify that she was not heavily sparred; indeed she could not spread more canvas than an ordinary merchant-steamer. I beg to add, when the tide-surveyor was on board, the joiners were fitting doors to the cabins.

I am, &c.,
(Signed) J. F. MOORE HODDER,
Collector.

The officer acting for the collector at Glasgow transmitted the subjoined report, made by the measuring surveyor at that port.[2] He added that the Japan had not cleared from Glasgow:

CUSTOM-HOUSE, *Glasgow, April* 10, 1863.

SIR: In compliance with your reference, I beg to report that an iron screw-steamer, called the Japan, was recently built by Messrs W. Denny, Brothers, at Dumbarton.

I surveyed her on the 17th January last, and visited on two subsequent occasions for the purpose of completing my survey. She appeared to me to be intended for commercial purposes, her frame-work and plating being of the ordinary sizes for vessels of her class.

[1] Appendix, vol. i, p. 403. [2] Ibid., p. 404.

I annex a copy of my certificate of survey, which shows the vessel's tonnage and description, and beg to add that the formulæ and certificate of survey for the Japan were forwarded to Liverpool on the 2d ultimo, with a view to her being registered as a British ship.

Respectfully submitted.

(Signed) M. COSTELLO,
Measuring Surveyor.

FORM NO. 1A. Steamer.

Certificate of survey.[1]

Name of ship.	British or foreign built.	Port of intended registry.	How propelled.
"Japan."	British.	Liverpool.	By a screw-propeller.

Number of decks	One and a poop.	Build	Clincher.
Number of masts	Two.	Galleries	None.
Rigged	Brig.	Head	Demi-woman.
Stern	Round.	Frame-work	Iron.

MEASUREMENTS.

	Feet.	Tenths.
Length from the fore part of stem under the bowsprit to the aft side of the head of the stern-post	219	00
Main breadth to outside plank	27	25
Depth in hold from tonnage-deck to ceiling at midships	14	75

Name and address of builder—W. Dennys, Brothers, Dumbarton.

TONNAGE.

	No. of tons.
Tonnage under tonnage-deck	554. 54
Closed-in spaces above the tonnage-deck, if any; viz:	
Space or spaces between decks	
Poop	85. 67
Round-house	
Other inclosed spaces, if any, naming them—store-room on deck	1. 39
Excess of space appropriated to the crew above $\frac{1}{16}$ of the remaining tonnage	6. 68
Total	648. 28
Deduction for space required for propelling-power as measured	221. 03
Register tonnage, (after making deduction for space for propelling-power in steamers)	427. 25

Length of engine-room, 54 feet 3 tenths.
Number of engines, two.
Combined power, (estimated horse-power,) number of horses-power, 200 horses.
Name and address of engine-makers, Denny & Co., Dumbarton.

I, the undersigned Martin Costello, measuring surveyor for this port, having surveyed the above-named ship, hereby certify that the above particulars are true, and that the name and the port of registry are properly painted on a conspicuous part of her stern in manner directed by the merchant shipping act, 1854.

Dated at Glasgow, the 4th day of February, 1863.

(Signed) M. COSTELLO,
Surveyor.

It appears from these reports that the vessel, when surveyed by the measuring surveyor, presented nothing calculated to excite suspicion; that she had the appearance of being intended for commercial [123] purposes, her frame-work and plating being such as are *ordinary in trading-vessels of her class; that she had been regularly entered outwards for Point de Galle and Hong-Kong, with a crew of

[1] Appendix, vol. , p. 423.

forty-eight men, and that, on the 1st April, 1863, she had cleared for that destination in ballast.

It subsequently appeared further that she had, on the 20th of March, 1863, been registered as the property of a Mr. Thomas Bold, a merchant residing at Liverpool, on the declaration of Bold that he was the sole owner of her. It also appeared that she had been advertised at the Sailors' Home in Liverpool as about to sail for Singapore; that seamen were hired for her at Liverpool as for a ship bound for that port; and that all her crew so hired signed articles for a voyage to Singapore, or any intermediate port, for a period of two years, and that the men believed that this was the real destination of the ship. She took her crew on board while lying in the Clyde, off the port of Greenock, and on the 2d of April she sailed.

With respect to the Alar, the small steamer stated by Mr. Adams in his note of the 8th to have conveyed men and munitions of war to the Japan, the commissioners of customs had, before the date of that note, received from their collector at Newhaven the following report, which they had forwarded to the treasury:[1]

Mr. Dolan to the commissioners of customs.

CUSTOM-HOUSE, *Newhaven, April* 6, 1863.

HONORABLE SIRS: The steamship Alar, of London, 85 tons, owned by H. P. Maples, sailed on Sunday morning, 5th instant, at 2 a.m., bound, according to the ship's papers, viz, the accompanying content, for Alderney and St. Malo. On Saturday, at midnight, thirty men, twenty of whom appeared to be British sailors, ten mechanics, arrived by train. Three gentlemen accompanied them, Mr. Lewis, of Alderney, Mr. Ward, and Mr. Jones. The men appeared to be ignorant of their precise destination: some said they were to get £20 each for the trip. A man, rather lame, superintended them. Shortly after midnight a man arrived from Brighton on horseback, with a telegram, which, for purposes of secrecy, had been sent there and not to Newhaven, it is suspected. Mr. Staniforth, the agent, replied to my inquiries this morning that the Alar had munitions of war on board, and that they were consigned by —— —— to a Mr. Lewis, of Alderney. His answers were brief, and with reserve, leaving no doubt on my mind nor on the minds of any here that the thirty men and munitions of war are destined for transfer at sea to some second Alabama. The private telegram to Brighton intimated, very probably, having been reserved for the last hour, where that vessel would be found. Whether the shipment of the men, who all appeared to be British subjects, can, if it should be hereafter proved that they have been transferred to a Federal or confederate vessel, be held as an infringement of the foreign-enlistment act, and whether the clearance of the Alar, if hereafter proved to be untrue, can render the master amenable under the customs consolidation act, is for your consideration respectfully submitted.

(Signed) R. J. DOLAN, *Collector.*

No. 7. *Content.*

Port of Newhaven, —— ——, pilot.

Ship's name and destination.	Tonnage and number of guns.		If British, port of registry; if foreign, the country.	Number of crew.	Name of master.	Number of passengers or troops.
	Tons.	Guns.				
"Alar," Alderney and St. Malo.	85	.....	British ship, London.	16	Jas. Back.	.....

[1] Appendix, vol. i, p. 405.

[2] Blank in the original.

Warehoused and transshipment goods.				Drawback and restricted goods.			
Marks.	Numbers.	Number and description of packages.	Remarks.	Marks.	Numbers.	Number and description of packages.	Remarks.

British goods and foreign goods free of duty, and foreign goods not for drawback:

Sundry free goods.

Examined.
(Signed) W. S. FLINT, *Examining Officer.*

G. W. STANIFORTH, *Broker.*
Cleared, dated April 4.

I do declare that the above content is a true account of all goods shipped or intended to be shipped on board the above-named ship, and correct in all other particulars, and that all the requirements of the act 17 and 18 Vict., cap. 104, have been duly complied with.
(Signed) JOS. BACK, *Master.*

Signed and declared, this 4th day of April, before me.
(Signed) W. K. STAVELEY, *Collector.*

[124] *When this report was received no information respecting the vessel then known as the Japan had reached the commissioners of customs or the government, and on this point no information was or could be conveyed in the report, since none was possessed by the collector at Newhaven.

On the 11th April, 1863, the following statement appeared in the second edition of the Times newspaper:[1]

PLYMOUTH, *Saturday Morning.*

The steamship Alar, Captain Back, of and from Newhaven, for St. Malo, put in here this morning, and landed seventeen men belonging to the steamship Japan, Captain Jones, 600 tons, which left Greenock on the 28th March for a trading voyage in the Chinese seas. On arrival off the coast of France she lay to for three days, it is supposed to take in more cargo. On the 4th April, at 11 a. m., one of the condensers of the steam-engines, which are about 200 horse-power, exploded, and two firemen in the stokehole were scalded, viz, Alexander McDuff, of Edinburgh, and William Hamilton, of Downpatrick, seriously; they were taken immediately into the captain's cabin, transferred to the Alar on the 9th, and are now in the Devon and Cornwall hospital here. The other fifteen are seamen and firemen, who took advantage of the proximity of the Alar, and are said to have "backed out of the voyage to China." They left by train this morning for Liverpool, Portsmouth, &c. The Japan, which had a complement of eighty men, has proceeded. The Alar had to lay to in the Channel on Thursday and Friday, in consequence of some trifling damages.

Earl Russell, on observing this statement, gave orders that it should be immediately brought to the notice of the secretary of state for the home department, and the lords commissioners of the treasury. Afterward, and on the same day, at 5 p. m., he received from Mr. Adams the following note referring to it:[2]

[1] Appendix, vol. i, p. 402.

[2] Ibid., p. 401.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, April 11, 1863.

MY LORD: I have the honor to inclose to your lordship a slip extracted from the London Times of this day, touching the case of the vessel now called the Japan, but named at Greenock lately the Virginia. It is needless to add that the statement therein made of the destination of the vessel is known to me to be false. I have reason to believe that she has not gone. The steamer Alar has already transferred to her one 56-pounder gun and four smaller ones, and is expected to return to her.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

Copies of this note were immediately sent to the home department and the treasury, with a request that it should receive immediate attention, and that those departments would take such steps as might be legally in their power to prevent a violation of the law.

On the same evening, at 7.40 p. m., orders were sent by telegraph to the collector of customs at Plymouth to make inquiry about the Alar; and at 11.40 p. m. an answer was received from him to the effect that she had arrived that morning, and that the collector had taken the master's statement, and had forwarded it to the board of customs.

The statement so forwarded, and the collector's letter inclosing it, were as follows:[1]

Mr. Browne to the commissioners of customs.

CUSTOM-HOUSE, *Plymouth, April* 11, 1863.

HONORABLE SIRS: I beg to submit, for your honors' information, the inclosed statement of the master of the steamer Alar, of London, to which he has affixed his signature. He states that his vessel is a regular trader between Newhaven and the Channel Islands.

Respectfully, &c.,
(Signed) N. E. BROWNE.

Statement of Mr. Back, master of the screw-steamer Alar.

I cleared from Newhaven on the 4th April for Alderney and St. Malo, in ballast, and sailed from thence on Sunday the 5th, having on board about thirty passengers, of whom about six were in the cabin, and a quantity of packages, which I supposed contained provisions and passengers' baggage. Before leaving a principal party was pointed out to me by the owner of my ship, and I was informed by him that the provisions belonged to this party, and that I was to obey his instructions.

On Sunday, about 3 p. m., my engine broke down, owing to the bursting of the feed-pipe, and I was compelled to rake out fires, and blow off steam; the engineer repaired damage, and after about seven or eight hours' delay I proceeded on my voyage.

[125] Broke down again on Monday morning, from some cause, and proceeded, after repairs and similar delay. Laying-to on Tuesday afternoon and night, weather very thick, and blowing from westward.

On Wednesday, about 11 a. m., saw a steamship a long way off to the westward, with signal flying, but I know not what colors. The passenger before mentioned asked me to bear down to the ship, which I did; but before reaching her, my engine broke down again, when the steamer came up to me, and took my vessel in tow. The steamer towed me toward the coast of France, in order that I might get shelter to effect repairs. She towed me for about an hour, then the rope parted; and in coming back to fetch me again, the tow-rope got foul of the large steamer's propeller, and caused her to fall down upon us, damaging our stanchions, and carrying away our bowsprit.

The passenger before mentioned then asked me to transfer the provisions and baggage to the large steamer, which was done, by about twenty of the passengers, who also went on board the steamer, where they remained. I was then asked by a person in authority on board the large steamer, if I would take two men who had been badly scalded to any port where there was an hospital, which I consented to do, and they, with about nine or ten others, and the person who had spoken to me about the sick men, came on board my vessel; and I at once proceeded for the first English port I could make that had an hospital.

[1] Appendix, vol. i, p. 408.

I parted with the large steamer on Thursday afternoon. On the afternoon of Friday we again broke down, and were delayed about the same time as before. About 2 a. m. on Saturday the 11th, we sighted the Eddystone, and bore up for Plymouth, which we reached about 4.30 a. m., when we landed the person we had taken with us from Newhaven—the person who spoke to us on board the steamer—about one dozen men, including the men from the steamer, and the two sick men for the hospital. I heard the large steamer was called the Japan, but I did not see her name on her stern, as I had enough to do to attend to my own ship.

(Signed) J. F. BACK, *Master of the Alar.*

CUSTOM-HOUSE, *Plymouth, April* 11, 1863.

(Signed) N. E. BROWN, *Collector.*

On the 16th April, Earl Russell received from Mr. Adams a note inclosing two depositions purporting to be made by seamen who had shipped in the Japan at Greenock, as part of her crew, and had since returned to Liverpool. The note and copies of depositions were as follows:[1]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, April 15, 1863.

MY LORD: I have the honor to transmit copies of two depositions of British subjects, who appear to have been solicited to engage in the unlawful expedition of the Japan, *alias* the Virginia, against the commerce of the United States. I append a list of the officers and men, subjects of Great Britain, shipped at the Sailors' Home in Liverpool, a large part of whom have been induced to join the piratical expedition. Likewise a list of the men who refused to enlist, left the Virginia, and returned to Liverpool.

It is not without great pain that I feel it my duty to point out to your lordship these transactions at Liverpool, and the extent to which, if not in some way prevented, they are calculated to give rise to complaints in the United States of the violations of neutrality deliberately committed by Her Majesty's subjects in the port of Liverpool.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

Deposition of Edward Thompson.

Edward Thompson, of No. 18 Denison street, in Liverpool, makes oath and says: I am an able seaman, and served for five years in a man-of-war, on Her Majesty's ship Neptune and others. I was shipped from Liverpool to Greenock to join the steamer Japan, as I was told, bound on a voyage to Singapore. She was advertised in Sailors' Home as bound for this port. I belong to the royal naval reserve. We sailed from Greenock on the 2d day of April instant. Captain Hitchcock was in command. We sailed first down toward the Isle of Man. We then tacked and went north through the North Channel and down the west coast of Ireland, passed Cape Clear, and steered east up the Channel. Ushant light was the first light we sighted; went toward St. Malo. We then put her to the westward, and dodged at slow steam all night. We fell in with the Alar steamer just off Morleux; we were not more than three or four miles from land at the time. When the Alar saw us she hoisted a flag for a pilot; after she got her pilot on she hoisted a flag of distress. We had taken her in tow before the pilot reached us. We floated about until night, then got the Alar alongside, and commenced to discharge the cargo into the Japan. We were three nights engaged in discharging the cargo; we did nothing in the day-time. She brought to us guns, shot, shell, rockets, ammunition, rifles, cutlasses, and all sorts of implements of war. I counted nine Whitworth guns to be mounted on the decks. I may be mistaken about the maker's name. I only know they were breech-loading guns. I understood there was one large pivot-gun on board when we left Greenock. I left the vessel on Friday last, in the steamer Alar. After we got all the cargo discharged from the Alar into the Japan, at 4 o'clock on Friday afternoon, while we were off Brest, about two miles from land, the new captain who came to us in the Alar, having dressed himself in regimentals, in a blue uniform with a star in the epaulets, had all hands piped aft by the boatswain. He then directed the lieutenant to read the articles, and then said, "We are not bound for Singapore; we are going to sail under the confederate flag, the [126] same as the *Alabama, to sink, burn, and destroy vessels belonging to the United States. All of you who wish to join, I will give £10 in cash as soon as you sign the articles, and you who do not wish to join can go back in the Alar. Those who join

[1] Appendix, vol. i, p. 412.

shall also have £1 per month extra." The captain told us her name was to be the Virginia, and this was the name mentioned in the articles which we were required to sign. They had the confederate flag on board at the time laid down on the floor of the cabin, but it was not hoisted. The articles were for three years, or during the war with the United States. During the night, while we were discharging the cargo from one vessel to the other, we were at anchor very close into the land; not more than half a mile from the land, opposite a magazine which lies a quarter of a mile from Ushant light. We went to this place, or very near there, every night. After reading the articles, the men who refused to sign asked about their wages. They were told that Captain Hitchcock would settle this after we arrived at Liverpool. I saw Mr. Hitchcock yesterday at Jones & Co.'s office, No 28 Chapel street, Liverpool. This house of Jones & Co. acted as agents for shipping the men. One of their clerks was at the steamer which took us around from Liverpool to Greenock. They signed all the shipping notes; at least, they were all made payable there at Jones & Co.'s offices, and they have paid them since. They paid me my shipping note yesterday at their office in Liverpool. There were ten sailors lately belonging to the British navy from Portsmouth, who came out in the Alar, but refused to join the vessel. They received £2 apiece from Captain Hitchcock not to say anything about the matter. This was paid them while we were returning to Plymouth. Mr. Jones, one of the firm in Chapel street, Liverpool, who came out to us in the Alar, was present at the time when the money was paid, and ordered Captain Hitchcock to pay it to the men. Mr. Jones seemed to [take] charge of everything. The report was that she, the Virginia, was to go to Madeira. She had not more than five days' coal when we left her. She is an iron vessel, very slightly built, with a full poop as far as the after scuttle-hole to fireroom and top-gallant forecastle. Three masts, square rigged forward; fore and aft main and mizen. She has one funnel between the fore and main mast; a house over engine room, with a donkey-engine in it. The Alar is a British steamer hailing from London. When she came out to meet the Japan, or Virginia as she is called, she sailed from Newhaven.

(Signed) EDWARD THOMPSON.

Sworn before me at Liverpool this 14th day of April, 1863.

(Signed) J. PEARSON,

A Commissioner to Administer Oaths in Chancery in England.

Deposition of Thomas Mahon.

Thomas Mahon, residing at No. 8 Court, Gore street, Toxteth Park, Liverpool, being sworn, says:

I am a native of Liverpool, and am a laborer. On or about the 27th day of March last past, hearing that a steamer was wanting men for Singapore, I went to the Sailors' Home in Liverpool, and was introduced to a man as the captain. I don't remember his name at present; I believe it is Hitchcock. He is in Liverpool now. He told me he was captain of the Japan. He said he wanted firemen and trimmers, and the next day, the 27th, I went with him to the shipping-office, and there signed articles for steamer Japan for Singapore, or any intermediate port, for two years. Captain Hitchcock engaged me, and witnessed my signing. I was to have £3 10s. per month. About fifty men in all signed in the same way. When we had signed, we were told to take our clothes to Jones & Co.'s, No. 28 Chapel street, and would then receive an advance note for a month's pay. I took my clothes there, and received a note for £3 10s., payable ten days after the ship sailed from Greenock. At Jones & Co.'s we were told by the Captain Hitchcock to meet at the Glasgow boat at 5 o'clock on Monday afternoon at the dock. We went as ordered, and our clothes were brought down, and our fares were paid by a clerk from Jones & Co. We sailed the same evening in the Heron, about fifty in all. We arrived at Greenock about 3 or 4 the next afternoon, and a tug came alongside and took us off the Heron and put us on board the screw-steamer Japan, lying in the river opposite Greenock. Captain Hitchcock came off in the tug and took us on board. He went on board with us; he gave us our orders. I had shipped as coal-trimmer, and believed she was an English steamer, and going to Singapore. She had then the English ensign flying. Captain Hitchcock remained on board and exercised command. We remained at Greenock till Wednesday. On Thursday, about 6 in the morning, when we got under way, the pilot said we were going on a trial trip. On the Wednesday night the revenue officers came on board, after the stores came on board, and put seals on the stores. The stores came off in a steamer and a lighter. They consisted of large quantities of spirits, clothing, blankets, beds, knives and forks, tins, and the like. I did not see any other government officers visit the ship. We sailed out, I believe, on the Thursday morning, as we supposed on the trial trip, and steered toward sea. In the afternoon we returned to the light-house down the Clyde and stopped, but did not anchor. A tug came to us there with some more men and provisions from Greenock, and as soon as we had taken them on board we started down again and steered right to sea. The pilot left us next morning off Castletown, Isle of

Man. Captain Hitchcock had command of the vessel. About two days after we made land, as I was told, on the coast of France, and we kept beating about there for several days. We wondered why, but did not ascertain the reason.

On Monday, the 6th, an English screw-steamer, the Alar, of London, came to us and spoke us. We were so near the coast of France that a shot could be fired ashore. Captain Hitchcock told the Alar to go under the island. The Alar soon after made a signal as if she was broke down, and the Japan took her in tow. We towed her awhile and the hawser broke. She then steamed away herself, and we soon after spoke a French pilot-boat and we took a pilot on board, as did also the Alar. The Alar sailed away into a small bay and we followed, and came to an anchor near the shore, no further off than I could have thrown a stone. The Alar then made fast alongside, and that night a very large case of guns and a quantity of ammunition in small cases were taken on board the Japan from the Alar. The next morning both vessels sailed [127] out and we went out to sea, and the Alar into another bay. In *the afternoon we joined the Alar in the other bay, and took on board the rest of her cargo, consisting of guns and ammunition. Men in the mean time were engaged making the fittings for the guns. The same afternoon a tall man they called Lamont or Dupont came on board from the Alar and took charge of the Japan. He came on deck in uniform and called all the men aft. He told us she was no more to be called the Japan, but the Virginia, confederate war-steamer. He produced articles; and reading them to the effect that there would be discipline same as the Alabama or any other under the confederate flag, he said he was going to burn and destroy all North American vessels, and told us we should have £10 bounty to sign for three years under the confederate flag. One of the men asked about prize-money, and he said we should have the same as the Alabama; that any man who had a family could have half-pay. Eight of us went into the cabin to see what he would do with us if we would not ship. He said Mr. Jones would pay our fare through to Liverpool, and anything else that we required when we came ashore. Mr. Jones was sitting at the table where they were paying the bounty and signing the articles, and said it would be all right. We and a number of others, in all about twenty-four, refused to join, and the same night we were taken to the Alar and both vessels left the bay. The next morning the Alar took the pilot from the Japan and landed him and her own about where we had picked them up. I was below when she took the pilot off, and did not see the Japan after leaving her in the bay. I heard the order given to hoist the confederate flag. Captain Hitchcock, Mr. Jones, and the chief and second mates came from her with us. We were landed at Plymouth on Saturday morning, and received from Captain Hitchcock a sovereign each to pay our way to Liverpool, and the same day came in to Liverpool in the steamer.

(Signed) THOMAS MAHON.

Sworn the 14th day of April, 1863, before me,
(Signed) WM. RATHBONE,
A Magistrate for the County of Lancaster.

Mr. Adams also inclosed the two lists mentioned in his note. In the "list of officers and men," the only officers mentioned were the master, first mate, second mate, store-keeper, and boatswain. All of these, except the boatswain, were stated to have returned in the Alar, together with many others of the original crew of the Japan.

On the same 16th April, 1863, Earl Russell received from Her Britannic Majesty's consul at Brest a report, dated the 13th April, which was as follows:[1]

Consul Sir A. Peyrier to Earl Russell.

BREST, *April* 13, 1863.

MY LORD: I have the honor to report to your lordship that I have received the following letter from Conquet:

"CONQUET, *April* 10, 1863.

"SIR: I have the honor to inform you that on the 7th of this month two English vessels, a brig and a steam-schooner, were seen in the Fromveur, (a passage between Ushant and the main-land,) with a signal for a pilot. Piton and Maree, pilots of Molene, went on board. The names given to them were, Japan of Liverpool, for the brig, and Alar of London, for the schooner, which was bound from Emzic to Liverpool with a general cargo. This vessel having sprung a leak, had requested the brig to stay by until all danger was over. After beating about all day they anchored in Berthenume Bay, about 6 in the evening, where they tried to transship part of the cargo from the

[1] Appendix, vol. i, p. 416.

schooner to the brig, but a heavy surf prevented their doing so. The pilots offered to bring the vessels into Brest, which was refused. Next morning, the 8th, they got under way at about 6 in the morning, went through Conquet Channel, and anchored in Stiff Bay, under Ushant, where the transshipment was effected that evening. They then sailed for Liverpool."

I called upon the vice-admiral, commander-in-chief, to know if he had received any account of this affair from Conquet. He replied that he had not yet received the official report, but that he had been informed of all that I had stated, and also that the schooner had struck on a rock in Stiff Bay, and that the cries of her crew had been heard at the light-house on Ushant. Suspecting that this transshipment might be of war contraband goods for America, he has demanded a full report from the commissary of marine at Conquet, and will communicate it to me.

I have, &c.,
(Signed) ANTHY. PERRIER.

A somewhat more detailed statement of the incidents described in the foregoing report has been recently furnished to Her Majesty's government by Her Majesty's consul at Brest. This statement is as follows:[1]

Consul Clipperton to Earl Granville.

BREST, *September* 9, 1871.

MY LORD: I have the honor to acknowledge the receipt of a dispatch from the foreign office marked separate, and dated 31st August last, instructing me to [128] report to your lordship all the information I * can obtain respecting the equipment of the confederate cruiser Georgia, then known as the Japan or Virginia, off Morlaix, and the visit of that vessel to Brest between the 4th and 9th of April, 1863, and to forward with my report a small map or chart of the coast, explanatory of the proceedings which took place within or contiguous to the limits of French jurisdiction.

In reply, I beg most respectfully to inform your lordship that at Morlaix nothing is known of the confederate cruiser Georgia, either under the name of Japan or Virginia, but the matter appears to have transpired near to Conquet, marked (A) on the accompanying chart, and was as follows:

On the 9th April morning, 1863, two English vessels, a brig and steam-schooner, were seen in the Fromveur Channel between Ushant and the main-land, (B,) making signals for a pilot. Two pilots of Molene, named Piton and Marec, went on board. They were told that the vessels were the brig Japan of Liverpool, and schooner Alar of London, bound for Liverpool, with a general cargo.

The Alar was represented to have sprung a leak, and had requested the brig to stand by her to render assistance if required. At about 6 in the evening of the same day the two vessels anchored in Bertheaume Bay, (C,) and efforts were made unsuccessfully, owing to a heavy surf, to transship part of the cargo from the schooner to the brig. The pilots proposed to take the vessels into Brest, but were refused. The two vessels got under way at 6 a. m. of the following day, the 8th, passed through the Conquet Channel, and anchored in Stiff Bay, (D,) under Ushant, where the transshipment was effected, and that same evening they sailed for Liverpool.

The official reports made to the admiral of the port of Brest by the French naval agent at Ushant, and the custom-house officer at Conquet, state that the schooner was sighted before the brig, and that both were seen hovering about for two or three days; they were both seen close alongside of each other, the schooner apparently discharging, or trying to discharge, cargo into the brig. After anchoring in Stiff Bay the transshipment was actively carried on until between 7 and 8 in the evening, at about which hour the brig went to sea.

At about 10 o'clock of the same night cries and noise of putting out boats were heard at the light-house, as if proceeding from the schooner. It is supposed that the schooner foundered, and that the boats went out to sea, as nothing further was ever heard of either vessel or crew.

I beg further to inform your lordship that two steam-vessels were constructed and partly fitted out at Nantes, during the war in America, for the Confederate States. On my return to my post I shall be in a position to forward all the information connected with them, should your lordship consider it expedient for me to do so.

I have, &c.,
(Signed) ROBT. CHAS. CLIPPERTON.

The places called Conquet and Bertheaume Bay, and mentioned in the two preceding reports, are on the coast of France, in the depart-

[1] Appendix, vol. i, p. 416.

ment of Finistère. The Baie du Stiff, or Stiff Bay, is on the coast of the French island of Ouessant, or Ushant.

From the statements contained in the preceding depositions and reports, it appears that the vessel afterward called the Georgia sailed from Greenock under the name of the Japan, as a merchant-vessel, on a trading voyage to the East Indies, and that until she arrived off the coast of France her crew were not aware that this was not her true character and destination; that she was armed for war in French waters; and that she there took on board her commander and officers, who then and there enlisted a crew.

With reference to Mr. Adams's note of the 15th April, 1863, the following letter was on the 21st April addressed to him by Earl Russell:

Earl Russell to Mr. Adams.[1]

FOREIGN OFFICE, *April* 21, 1863.

SIR: I stated to you in my letter of the 16th instant, that your letter of the previous day, respecting the case of the Japan, otherwise the Virginia, had been referred to the proper departments of Her Majesty's government, but I will not delay informing you that Her Majesty's government have received from the authorities at Glasgow and at Greenock reports, from which it appears that that vessel was constantly visited while she was in course of construction, and that the surveys seemed to show that she was intended for commercial purposes, and that her frame-work and plating were of the ordinary sizes for vessels of her class.

She was entered on the 31st ultimo, as for Point de Galle and Hong-Kong, with a crew of forty-eight men. She shipped on the 1st instant the bonded stores stated in the margin,[2] and she cleared on the same day in ballast for Point de Galle and Hong-Kong.

Her Majesty's government are further informed that the Japan left the anchorage early on the morning of the 2d instant, with the ostensible purpose of trying her engines, intending to return, having on board several joiners, who were fitting up her cabins. These men, who are said to have been employed at a later time in fitting up a magazine, were subsequently landed on some part of the coast lower down the Clyde.

The custom-house officer who visited the Japan on the evening of the 1st instant to see that her stores were correct, reports that he saw nothing on board which [129] could lead him to suspect that she was *intended for war purposes. Her Majesty's government are further informed that she was not heavily sparred, and that she could not spread more canvas than an ordinary merchant-steamer.

I am, &c.,
(Signed) RUSSELL.

On the question whether persons who had joined the vessel, or who had induced others to join her, could be prosecuted as offenders against British law, the law-officers, on the 30th April, 1863, advised as follows:[3]

In our opinion it is not competent to Her Majesty's government at present to take any steps in the matter to which Mr. Adams's dispatch of the 15th April refers.

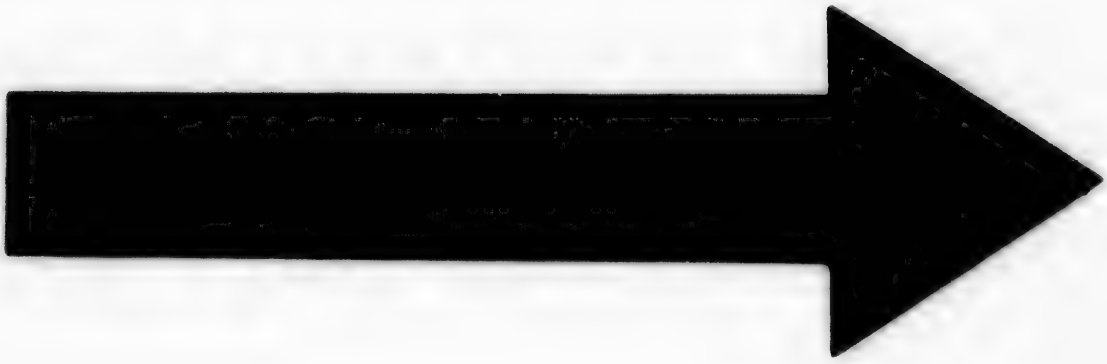
So far as relates to British seamen who have accepted the proposal made to them in French waters to engage in the belligerent service of the Confederate States, we think that they have offended against the 2d section of the foreign-enlistment act, and will be liable to be proceeded against for a misdemeanor if they should be found within British jurisdiction; the first part of that section (which applies to the persons entering into such engagements) being in the form of an absolute prohibition, applicable generally to British subjects, without reference to the place where the act prohibited may be done. But, inasmuch as these seamen are not at present within British jurisdiction, no steps can now be taken for their prosecution.

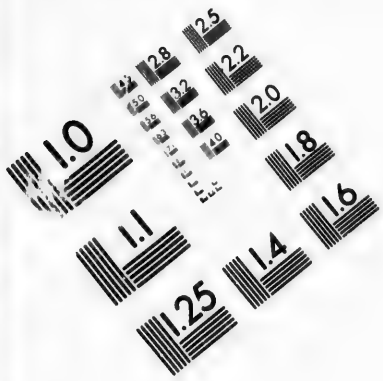
With respect to the seamen who have returned to this country, it seems clear that their conduct has been laudable, and not criminal. They were induced, by false and fraudulent representations, to enter into engagements at Liverpool for a perfectly law-

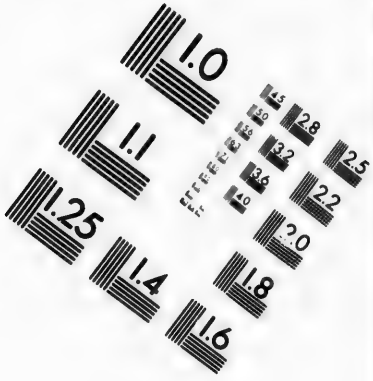
[1] Appendix, vol. i, p. 418.

[2] One hundred and fifteen gallons spirits, 32 gallons wine, 244 pounds tea, 159 pounds coffee, 212 pounds tobacco, 10 pounds cigars, 18 cwt. 3 quarters 2 pounds of sugar, 2 cwt. 2 quarters 8 pounds molasses, 2 cwt. 1 quarter 5 pounds raisins, 1 cwt. 1 quarter 8 pounds currants.

[3] Appendix, vol. i, p. 419.







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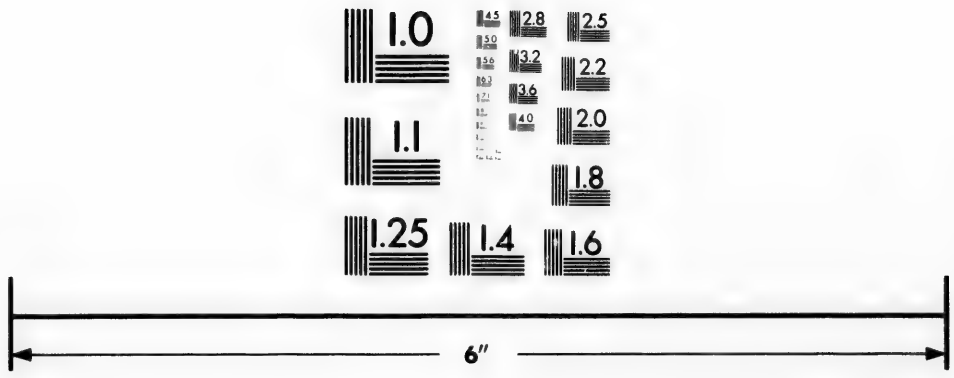

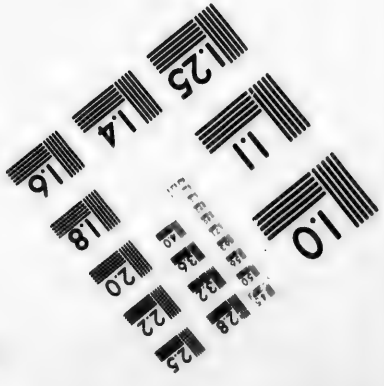

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ful voyage, and afterward, when apprised of the deception which had been practiced upon them, and invited to enter an engagement of a different character, they refused to do so.

With respect to Captain Hitchcock, and any other persons who may have been instrumental in inducing the crew of the Japan to take service in her before her departure from this country, it is clear that (howsoever censurable their conduct may have been) they did nothing contrary to the foreign-enlistment act; for it was not until the ship was in French waters that any proposal appears to have been made to any of the men to enter into the belligerent service of the confederate government, and the latter part of the 1st section of the foreign-enlistment act (which applies to the case of persons "hiring, retaining, engaging, or procuring" others to enter into the belligerent service of a foreign state) is expressly limited to acts done within the territorial jurisdiction of the British Crown.

On the 8th July, 1863, Earl Russell received from Mr. Adams a note, in which, referring to the Georgia, and stating (as the fact was) that his former representations concerning that vessel had unhappily been made too late for Her Majesty's government to interpose effectively, he called Earl Russell's attention to the circumstance that she had been, and until recently was, registered in the name of a British subject. The portion of the note in which reference was made to this matter was as follows:

Mr. Adams to Earl Russell.[1]

[Extract.]

JULY 7, 1863.

It is with great regret that I feel myself once more compelled to call your lordship's attention to the circumstances attending the outfit of the steamer called the Japan. It now appears that that vessel was, at the time of her escape, and has continued until very lately to be, the property of a British subject residing in Liverpool. That person is Thomas Bold, a member of the commercial house of Jones & Co. I have information which leads me to believe that only within a few days has Mr. Bold notified the collector of customs at Liverpool of his sale of this vessel to foreign owners, and requested the register to be canceled. That act was not completed until the 23d of June last. It would appear from these facts, should they prove to be true, that this vessel has remained the property of a British subject during a considerable time in which she has been engaged in committing extensive ravages upon the commerce of a nation with which Her Majesty is at peace. The fact of the outfit of that vessel for hostile purposes has already occupied the attention of your lordship, in consequence of former representations, unhappily made too late for effective interposition. But the circumstances of the retention of the ownership by a British subject for so long a period after she was known to be engaged in hostilities against the United States, is of too grave a character to justify me in omitting to call your lordship's particular attention to it, in advance of the possibility of receiving instructions respecting it.

On inquiry it appeared that the certificate of registry of the steamer Japan, which had on the 20th March been issued to Bold by the collector of customs at Liverpool, had on the 23d June, 1863, been delivered up by Bold to the collector, with the following letter:[2]

[130] **Mr. Bold to Mr. Edwards.*

LIVERPOOL, *June* 23, 1863.

SIR: I beg to hand you the certificate of registry of the screw-steamer Japan, official No. 45868, port No. 93, as I have conveyed the vessel to an alien.

I am, &c.,
(Signed) THOMAS BOLD.

The circumstance that Bold's name had, on his own declaration, been entered on the register-book as the owner of the vessel, and had continued to be so registered till the 23d June, did not render him responsible for acts done during the interval by the persons who had the actual possession and control of her, unless it could be proved that he was himself a party to such acts, of which there was no evidence. Nor could he have been

[1] Appendix, vol. i, p. 419. [2] Ibid., p. 421.

prosecuted under the foreign-enlistment act for participating in an unlawful equipment of the ship, on proof merely that he was the registered owner, and without any evidence to show that he had been actually concerned in so equipping her within Her Majesty's dominions. Of this again there was no evidence. No proceedings, therefore, were or could have been taken against Bold. From a dispatch addressed by the United States consul at Liverpool to Mr. Seward, dated 7th August, 1863, it appears that the consul had in the preceding July consulted the legal adviser who had been employed by him in the matter of the Alabama (Mr. Squarey) on this subject, and Mr. Squarey advised as follows:[1]

Mr. Squarey to Mr. Dudley.

[Extract.]

10 WATER STREET, 1863.

It does not appear to me the engagement of the crew can be treated as an offense against the act, because the only legal contract binding upon the crew was that appearing upon the articles. The men were not liable to do anything except what they had agreed to do by the articles; and from the statements of the men whom I saw it did not appear that they knew when they shipped that it was expected or intended that they should serve on board a man-of-war or privateer. As regards the liability of the British registered owner to make good to the owners of the American vessel destroyed the loss sustained by them, I conceive it must depend upon the question whether those in command of the vessel at the time can be considered to have been the agents of the British owner. If they were such agents, and there was any evidence to show that the destruction of the American ship could be considered as an act within the scope of their authority, I have no doubt that the owners would be liable; but it appears to me that the circumstances to which I have previously referred go very far to rebut the presumption that such agency existed, and to prove that in destroying the American vessel the officers and crew were acting, not for the British owner, but for the government of the so-called Confederate States. In such case I do not think that any liability could be established against the British owner; for it is now well established that the mere fact of being on the register of the ship does not involve liability for the acts or engagements of the master and crew, and that such liability is, in fact, a question depending upon express or implied agency in every case.

Although, therefore, I do not see how a British owner is to be made liable, there is, in my opinion, a case which justifies the American Government in bringing the matter before the notice of the British government, and requiring explanations from that government of the circumstances under which a British vessel is found to be engaged in the destruction of vessels belonging to American citizens.

With reference to this part of the subject, it may be here stated that, in the month of January, 1864, a prosecution was commenced by the direction of Her Majesty's government against two persons, named Jones and Highatt, (who were admitted to be partners with Bold in the business of ship-store dealers and ship-chandlers, though not in that of ship-owners,) for having, within the Queen's dominions, hired and procured men to engage in the service of the Confederate States, by enlisting on board the Georgia. The case came on for trial at the Liverpool assizes in August, 1864, and the defendants were found guilty and sentenced to pay a fine. No evidence could be produced on the part of the prosecution to show that the men who shipped on board the vessel at Greenock had at that time, or when they were originally hired, any intention to enter the confederate service, although there was evidence that the defendants hired them with the intention of afterward inducing them to enlist in that service.

The Japan, after having been armed, was commissioned as a public ship of war of the Confederate States, under the command of a Lieutenant Maury, formerly an officer in the Navy of the United States, and under the name of the Georgia, by which name she was afterward known.

[1] Appendix, vol. i, p. 427.

[131] *In May, 1863, she was admitted into the harbor of Bahia, and coaled there; on the 16th August she arrived at Simon's Bay, in the colony of the Cape of Good Hope, and was allowed to repair and coal; and in October, 1863, she is believed to have touched at Teneriffe and coaled at that place. On or about the 28th October, 1863, she arrived in the roadstead of Cherbourg, and was shortly afterward admitted into the dock-yard for repairs. She was admitted as a man-of-war, on the order of the minister of marine, and her repairs (which were not extensive) were made by the dock-yard workmen, and are stated to have been paid for at the usual rate of work done on ships of war, which is less than the rate charged for work done on merchant-ships. She remained at Cherbourg during nearly four months. On the 25th March, 1864, she arrived at Pauillac, the boarding station of Bordeaux, and was reported as in want of repairs for her steam-machinery and of provisions. She was allowed to keep her gunpowder on board, on condition of mooring at Lormont, an anchorage a little distance below Bordeaux. Her machinery having been surveyed and certified to require a fortnight for its repair, she was given that time to remain at Lormont. She remained at anchor, however, until the 28th of April.[1]

While the Georgia was at Cherbourg, the Florida being at the same time in the harbor of Brest, it was ascertained that some seamen had been induced to go from Liverpool to France in order to join those vessels. Four of these men were identified, upon inquiry made by order of Her Majesty's government, as belonging to the royal naval reserve, and they were forthwith discharged from the force. One Campbell, a keeper of a sailors' boarding house at Liverpool, was found to have been concerned in inducing them to go, and was prosecuted and brought to trial and pleaded guilty. It was deemed sufficient by the judge to exact security against a repetition of the offense, by requiring him to enter into recognizances in the sum of £150 to appear for judgment when called upon.

On the 2d May, 1864, the Georgia came into the port of Liverpool. Very soon after her arrival there, her crew were discharged, her warlike stores were lodged in warehouses, (where they remained until after she left Liverpool, as hereinafter mentioned,) and the vessel herself was removed to a dock at Birkenhead, dismantled, and offered for sale by public advertisement in the following terms:

For sale, the splendid screw-steamer Georgia, about 750 tons, builder's measurement; built by Messrs. Denny, of Dumbarton, 1863; has engines of 200 horse-power; speed 12 knots; carries a large cargo; is abundantly found in stores, and ready for immediate employment. For specification and further particulars, apply to Curry, Kellock & Co.

The reason given for selling her was that she was deficient in strength and speed, and was, by her construction, unsuitable for a cruiser.

Directions had been given, shortly after her arrival, that, if not *bona fide* sold, she should be ordered to leave the port as soon as she had received necessary repairs.

With respect to the manner in which these directions should be enforced, and the power to enforce them, the law-officers of the Crown were consulted, and advised as follows:[2]

Opinion of the attorney and solicitor general.

If the Georgia is still (as has been hitherto assumed) a public ship of war of a belligerent power, she is, while within Her Majesty's dominions, exempt from all civil and municipal jurisdiction, and it is not, therefore, upon any civil or municipal law of this realm that Her Majesty's government can act, if they should find it necessary to take

[1] Appendix, vol. i, p. 442. [2] Ibid., p. 456.

any compulsory measures with respect to her; nor will the execution of those measures belong to the commissioners of the customs, or to any other civil authority.

By the universal law of nations, and by the prerogative right of regulating the intercourse between this country and the public ships of war of a foreign government, which belongs to Her Majesty in right of her crown, it is competent for Her Majesty to prohibit the entrance of any foreign public ship of war into Her Majesty's territory, except under such conditions as she may think proper from time to time to impose; and if any such prohibition is not duly obeyed, it is, in our opinion, perfectly within the competency of Her Majesty to enforce its observance by her military or naval officers, and by the use of force, if necessary.

If the Georgia has ceased to be a public ship of war of the Confederate States, and has been sold to and become the private property of any of Her Majesty's sub-
[132] jects, the case is different. Under these *circumstances, Her Majesty's orders would no longer be applicable to this ship; and, of course, no forcible or other means could be used for the purpose of compelling their observance in a case to which they would not apply. The Georgia, after such a sale, would be exactly in the same situation as the Gibraltar (formerly called the Sumter) was last year; she would be governed by the ordinary municipal law of this country, like any other private ship, the property of British subjects.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.

LINCOLN'S INN, *May* 23, 1864.

The vessel was sold to Mr. Edward Bates, a ship-owner carrying on a very extensive business at Liverpool.

Mr. Adams, on being informed of the sale, wrote to Earl Russell, stating that, on behalf of his Government, he must decline to recognize the validity of it, and must claim the right to capture the vessel wherever she might be found on the high seas.

On the 27th July he again wrote to Earl Russell, suggesting that there was reason to suspect that the sale was fictitious, and the vessel intended to be again employed in the confederate service.

To this letter Earl Russell replied as follows:[1]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *August* 8, 1864.

SIR: With reference to my letter of the 28th ultimo, I have the honor to state to you that Her Majesty's government do not see sufficient grounds for coming to the conclusion upon the statements contained in your letter of the 27th ultimo, that the steamer Georgia is about to be again used for belligerent purposes. With a view, however, to prevent the recurrence of any question such as that which has arisen in the case of the Georgia, Her Majesty's government have given directions that, in future, no ship of war of either belligerent shall be allowed to be brought to any of Her Majesty's ports for the purpose of being dismantled or sold.

I am, &c.,
(Signed) RUSSELL.

The directions mentioned in the above letter were issued accordingly, and were notified in the London Gazette as follows:

Extract from the London Gazette of September 8, 1864.

FOREIGN OFFICE, *September* 8, 1864.

It is hereby notified that Her Majesty has been pleased to order, that for the future no ship of war belonging to either of the belligerent powers of North America shall be allowed to enter, or to remain, or be, in any of Her Majesty's ports for the purpose of being dismantled or sold; and Her Majesty has been pleased to give directions to the commissioners of Her Majesty's customs and to the governors of Her Majesty's colonies and foreign possessions to see that this order is properly carried into effect.

On the 8th August, 1863, the Georgia, being then registered in the name of the said Edward Bates, sailed from Liverpool for Lisbon. Off Lisbon, and while on the high seas, she was captured by the United States war-steamer Niagara, and was sent to Boston for adjudication.

[1] Appendix, vol. i, p. 459.

Mr. Bates, her owner, thereupon wrote to Earl Russell as follows, complaining of the seizure of his ship:

Mr. Bates to Earl Russell.[1]

LIVERPOOL, *August* 27, 1864.

MY LORD: I beg to call your lordship's attention to a very serious outrage which has been committed upon me by the United States man-of-war Niagara, in having forcibly seized and sent to the United States my screw-steamer Georgia.

This vessel was, in the month of May last, lying in the Birkenhead dock, and was offered for sale by public advertisement by the well-known ship-brokers, Messrs. Curry, Kellock & Co., of this town.

I had her examined, and, thinking her a suitable vessel, I entertained an intention to purchase her. I knew she was the property of the confederate government, and thereupon, before completing a purchase, I communicated with the custom-house authorities at Liverpool, in order to ascertain whether the authorities would grant me a British register, without which I should not have bought her.

The customs authorities took some time to consider, and during all this period [133] the advertisement *continued in the public papers, and I have no doubt that this public announcement was seen and well known to the American consul at this port.

Eventually I was informed that a British register would be granted to me if I bought her. I concluded a purchase of her, and paid for her on the 13th June last. The purchase-money I paid to Messrs. Curry, Kellock & Co., and received a bill of sale signed by James D. Bullock. This document I presented at the custom-house, where I made the usual declaration of ownership, and the ship was thereupon duly registered in my name.

During the whole of this period she was in a public dock open to the inspection of the public, and where I dismantled her and proceeded to alter and repair her. All this time I did not receive any intimation from either my government or from the American consul or other authorities that my purchase was invalid.

In July I received overtures from Messrs. Bennett, of London, through Messrs. Meacock, of Liverpool, as brokers for the Portuguese consul in London, for a charter of the Georgia on time to the Portuguese government. I eventually accepted this charter, and then proceeded to fit her up in accordance therewith as a mail and passenger boat.

While she was being thus fitted up the Niagara visited the Mersey. The vessel was still open to inspection, and I have reason to believe that the officers of that vessel did inspect her, but no intimation was made to me of the intention to seize my property as soon as she should get into open waters.

So secure did I feel in the possession of my property, that, although the consul-general for Portugal conveyed to me his feeling of apprehension of the Niagara, I scouted the idea as something unworthy of credence, and on the 8th August she sailed from the Queen's dock in Liverpool for Lisbon, there to run in the service of the Portuguese government, from that place to the coast of Africa and back, with mails, goods, and passengers. On the completion of this service the Portuguese government covenanted and agreed to deliver my ship to me in the port of Liverpool.

Your lordship may therefore conceive the astonishment and indignation with which I received the intelligence on my return to Liverpool of the vessel having been seized off Lisbon by the United States steamer Niagara and sent to Boston.

I am well known in Liverpool as an extensive ship-owner.

I have no connection with the confederate government or their agents, and never have had, directly or indirectly.

I bought the vessel for the purpose of my own business, on an arrangement with the custom-house authorities that I should receive for her a British register, and in the belief that a British register would protect my property from the outrage which has been practiced upon me.

I respectfully submit these facts to your lordship's consideration, and trust that Her Majesty's government will forthwith take such steps as they may deem necessary in order to procure for me a restitution of my ship and compensation for the injury I have sustained.

I have, &c.,
(Signed) EDWARD BATES.

Mr. Bates was informed in reply that the question must go before a prize-court in the United States, and that he must be prepared to defend his interest therein. The view entertained of the case by Her

[1] Appendix, vol. i, p. 464.

Majesty's government was afterward more fully explained to him in the following letter:[1]

Mr. Hammond to Mr. Bates.

FOREIGN OFFICE, *September* 19, 1864.

SIR: I acquainted you shortly, by Lord Russell's direction, in my letter of the 9th inst., that the case of the Georgia must go before the prize-court in the United States, and that you must be prepared to defend your interest therein.

I am now further to acquaint you, in reply to your letter of the 27th ultimo, that having consulted the law-officers of the Crown, Lord Russell desires me to state to you that the Niagara, in capturing the Georgia and sending her into a prize-court for adjudication, which it is to be assumed will be the course she will pursue, has not exceeded the limits of her belligerent rights.

If the Georgia had formerly belonged to the mercantile marine of the Confederate States, and been the property of a private subject of the Confederate States, the United States cruiser would have been justified in seizing her upon the high seas, and in taking her into a prize-court for the purpose of submitting to proper judicial investigation the question whether the transfer of an enemy's vessel to a neutral *flagrante bello* had been *bona fide*, and executed in the manner and in the circumstances which international law requires. But it is a fact beyond the reach of controversy or denial that the Georgia had formed, till a very recent period, part of the confederate navy. The belligerent, therefore, had, *a fortiori*, the right to seize her and endeavor to obtain her condemnation in a prize-court. That court will have to determine, not only the question whether the transfer of the Georgia to a neutral owner was real, and accompanied by an entire extinction of all the interests and rights of the former hostile owner, but the much graver preliminary question whether (as against the right of capture of the other belligerent) a ship of war can be lawfully transferred by a belligerent *flagrante bello* in a neutral port to a neutral, with whatever publicity and however completely the transfer may have been actually made, and whatever alterations the structure, equipment, or employment of the vessel so *de facto* transferred may have undergone while in the possession of the neutral.

[134] *Lord Russell is further advised that the officers of the custom-house at Liverpool, in granting to this vessel, upon the production of proper documents, a British register, merely acted in conformity with the municipal laws of this country, which neither undertakes to assist and facilitate, nor pretends upon the high seas to overrule or supersede the right of maritime capture belonging to a belligerent under the law of nations as administered in prize-courts; and that it was certainly no part of the duty of Her Majesty's government to inform a private individual who might entertain the idea of purchasing this vessel of any risk which he might incur by so doing. Nor is Lord Russell aware of any obligation imposed by international law and comity upon the representatives or agents of the United States in this country, or upon the officers of the Niagara when at Liverpool, to give any notice or intimation whatever that the Niagara or any other cruiser of the United States might still consider the vessel a proper subject of capture, whether transferred or not to a neutral, and under whatever register or flag she might sail.

I am to add that the application contained in your letter of the 10th instant for documents in the case is now under consideration, and that an answer will be returned to you as soon as possible.

I am, &c.,
(Signed) E. HAMMOND.

SUMMARY.

The Georgia was a vessel built at Dumbarton, in Scotland, and sent to sea from the port of Greenock. For whom she was built and by whom and under what circumstances she was sent to sea are matters as to which Her Majesty's government has no information beyond what has appeared in the foregoing statement.

The Georgia neither appeared to be nor was, up to the time when she sailed from the port of Greenock, fitted out, armed, or equipped for war, nor especially adapted to warlike use. She appeared to be constructed and intended for a ship of commerce. She proved, in fact, to be not fitted for employment as a cruiser, and for this reason she was dismantled and sold after having been at sea for about nine months altogether, ex-

[1] Appendix, vol. i, p. 468.

clusive of the time during which she remained in the harbors of Cherbourg and Bordeaux.

She was registered under the name of the Japan, in the name of a Liverpool merchant, and was entered outward and cleared in the customary way for a port of destination in the East Indies. She was advertised at the Sailors' Home, in Liverpool, as about to sail for Singapore, and her crew were hired for a voyage to Singapore or some intermediate port, and for a period of two years. The men when they were hired believed this to be the true destination of the ship, and her voyage to be a commercial one, and they appear to have continued under this belief until after the vessel had arrived off the coast of France.

She was armed and equipped for war in the waters of France; she there took on board her commander and officers, and her crew were enlisted there; the crew who had shipped at Greenock having been released from their agreement and provided with the means of returning if they chose to do so.

Her officers and armament appear to have been conveyed to the French coast or its immediate vicinity, in a steamer which had cleared from Newhaven in ballast for Alderney and St. Malo, and which was stated to be a regular trader between Newhaven and the Channel Islands. The master of the steamer stated that the persons whom she conveyed were taken on board as passengers.

Her Britannic Majesty's government had no reasonable grounds to believe that the vessel was intended to cruise or carry on war against the United States until after she had departed from the waters of Great Britain and arrived in the waters of France. The government had indeed no knowledge or information whatever about her previous to the receipt by Earl Russell of Mr. Adams's note of 8th April, 1863.

Information about the construction and outfit of the vessel had for a long time before her departure been in the possession of Mr. Adams; and Mr. Dudley, who was (as it was his duty to be) in constant communication with Mr. Adams, knew of the hiring of seamen for her and had her examined by a man sent on board by him for that purpose. The information possessed by Mr. Adams was not, however, in his opinion, such that proceedings could be founded upon it; and no communication was made by him to Her Majesty's government on the subject until six days after the ship had sailed. At that time Mr. Adams had received further information (which proved to be erroneous) that the vessel was to receive her armament at Alderney, within the Queen's dominions, and he then made up his mind to "send notice of it to the British government, and leave it to them to act in the case as they might think fit." The vessel did not go to Alderney, and Mr. Adams's communication was (in his own words) "too late for effective interposition."

[135] *The Georgia, after having been armed for war in French waters, was commanded by an officer commissioned as such by the government of the Confederate States. Her officers were, as Her Majesty's government believes, Americans belonging to those States. Of the composition of her crew, Her Majesty's government knows nothing, except that it appears to have consisted, in part at any rate, of British subjects, who were induced by the persuasion and promises of her commander to take service in her while she was in French waters.

The Georgia was received as a ship of war of the Confederate States in the neutral ports visited by her, particularly in those of Brazil and France. On the same footing, and in the same manner, without favor

or partiality, she was received in a port of the colony of the Cape of Good Hope, and in a port within the United Kingdom.

After having been disarmed, dismantled, and sold in a British port, the Georgia was captured at sea by a United States cruiser, as having been a ship of the Confederate States, and incapable of being transferred, during the war, to a British subject. Her Britannic Majesty's government, while it saw no reason to doubt that the sale had been *bona fide*, did not dispute the right of the United States to capture the vessel for the purpose of submitting the validity of the transfer to the judgment of a prize-court.

During the cruise of the Georgia, which lasted (as stated above) about nine months, exclusive of the period of her stay in the harbor of Cherbourg, no serious endeavor to intercept or capture her appears to have been made on the part of the Government of the United States.

Her Britannic Majesty's government cannot admit that, in respect of the Georgia, it is justly chargeable with any failure of international duty, for which Great Britain owes reparation to the United States.

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*PART VIII.

STATEMENT OF FACTS RELATIVE TO THE SHENANDOAH.

PART VIII.—The Shenandoah.

On the 12th November, 1864, Earl Russell received from Her Britannic Majesty's consul at Teneriffe a report dated the 30th October, 1864, from which it appeared that a vessel bearing the name of the Sea King, from London, had shortly before that date arrived in the vicinity of the Madeira Islands; that she had there received on board guns and a small number of men from a British steamer called the Laurel; had been taken possession of by a person claiming to be her commanding officer in the name of the Confederate States, and had hoisted the confederate flag. This report was as follows:[1]

Consul Grattan to Earl Russell.

TENERIFFE, *October* 30, 1864.

MY LORD: I have the honor to inform your lordship that the British steam-vessel Laurel, (47819,) of the port of Glasgow, bound from Liverpool to Nassau, arrived here on the 21st instant for the purpose of coaling.

The master, J. F. Ramsay, on presenting himself at this office, stated that he wished to land forty-three passengers, who were to proceed to England by the next Liverpool steamer, and that these persons were the master and crew of the British steamer Sea King, (official No. 48547,) of London, which vessel had been wrecked off the Desertas. The Laurel continued her voyage on the 22d instant. The master, on getting up steam, and not before, landed the above-mentioned seamen.

The master of the Sea King, P. S. Corbett, did not call at this office, as is usual in such cases, either for the purpose of making a protest or to claim assistance. Therefore, on the 25th instant, I sent to desire his attendance, and demanded the certificate of registry of his vessel, in pursuance of instructions contained in No. 13 Paragraph of the Board of Trade Instructions. On handing in his certificate he informed me that his vessel had not been wrecked, but that she had been sold in London, and delivered to her owners on the high seas; and that himself and his crew had landed here for the purpose of returning to England as passengers in the West Coast of Africa mail-steamer, due at this port on the 31st instant.

The discrepancy between the statements of the two masters led me to seek for further information respecting this matter, and the substance of the declaration I have obtained from George Kelly, Edward Everall, John Ellison, (Royal Naval Volunteers, 18536,) and John Hircus, all seamen belonging to the crew of the steam-vessel Sea King, is as follows:

"The Laurel sailed from Liverpool bound to Nassau with 24 supposed officers and 17 seamen, besides her own crew, 45 to 60 shells, about five tons of gunpowder, and various other munitions of war; she proceeded to Madeira, where she took about 300 tons of coal. The Sea King sailed from London on the 7th instant, and also proceeded to the offing of Funchal Roads. Both vessels then steamed to a place off the Desertas, where the sea was smooth, and the officers and men, arms, and munitions of war were transshipped from the Laurel to the Sea King on the 20th instant. The cases of arms were at once opened and the seamen armed themselves with cutlasses and revolvers. One of the officers then took command of the vessel in the name of the government of the so-called Confederate States of America. Some of the crew of the Laurel joined the Sea King; the remainder of her intended crew are to be sent out from England."

The 42 seamen now here, in charge of the former master of the Sea King, awaiting a passage to England, refused to join the confederate vessel, though as much as £17 per man was offered to them as bounty.

[1] Appendix, vol. i, p. 477.

In consequence of having become aware that a serious offense against British law has been committed on board a British ship, I have thought it my duty to take the depositions, upon oath, of four of the seamen of the Sea King, which I have the honor to forward to the Board of Trade, according to instructions.

These depositions, in my opinion, contain evidence sufficient to substantiate a charge against the master, P. S. Corbett, of an infringement of the foreign-enlistment act; I therefore, pursuant to paragraph 127 of the Consular Instructions, deem it proper to send the offender in safe custody to England, in order that cognizance of the offense may be taken,

I am satisfied that the 42 seamen now here are about to proceed to England by the West Coast of Africa mail-steamer, which leaves this port for England on this day.

I have, &c.,
(Signed) HENRY C. GRATTAN.

[157] Inclosed in the above report were depositions on oath made by several seamen, of *whom two belonged to the Royal Naval Reserve, and all had refused to take service on board of the Sea King when she was declared to be a confederate ship of war; and also a statement signed by the master of the Sea King.

These depositions were as follows:[1]

Deposition of John Ellison, R. N. V., 18536.

I signed as quartermaster in the Sea King on or about the 8th of October, 1864; proceeded to sea; after several days we came off Madeira; on the same night a steamer went into the port of Madeira; on the following morning the Sea King went into the bay, and signalized to the steamers that were lying there, and after two hours the Laurel came out to sea, and signalized to the Sea King, and was answered by hoisting No. 3 pendant, which I hoisted myself. I was ordered by one of the passengers to hoist this pendant; the captain was on the poop at the time, and, turning round, said to me these words, "Who ordered that pendant to be hoisted? Haul it down immediately;" which I did. After this flag was hauled down—about three-quarters of an hour afterward—the Laurel anchored off what I believe to be the Desertas; the Sea King anchored within about 30 yards of her. The captain of the Laurel was on the forecastle; our captain said, "I will come alongside of you directly," and he did so. In the mean time the men were erecting tackles, rigging purchases to the port main yard-arm, and preventer lifts and rolling tackle ready. After this, commenced to take in large heavy cases from the Laurel, I think four or five, by means of other purchases. Small cases and casks of powder were taken in forward; all lights ordered to be put out. These orders were given by some of the passengers of the Laurel, who had embarked on board the Sea King, and not by our captain. One of these passengers told us that he was the captain, and had charge of the ship, and ordered our captain to hoist the confederate flag, which was done. Shortly after, our captain gave orders for all hands to lay aft; when the men were aft, our captain came out of the saloon with our articles in his hand, and said, "Well, men, I have sold the ship." Immediately, the captain that had charge came out alongside of him. Captain Corbett said to us, "This gentleman is offering £4 for able seamen." I was standing close to the captain at the time, and I said to him, "I agreed with you in London to go to Bombay, which I have my naval certificate to prove." I told him, "You have broken your agreement; why are we not proceeding to Bombay?" He said, "Well, men, I cannot help it;" and, buttoning up his coat, he said, "Follow me, (and ran to the gangway;) I am off." I said, "Let him go; this is the ship we have earned our money in, and ought to have it out of." After he had gone, one of the passengers said to me, "Why cannot you go in this ship? It is good money." I said "I had never earned a shilling in America in my life, and therefore I did not wish to fight for it; that England was my country, and I was not ashamed to own it." He said, "Why?" I said, "You do not know where I belong to; do you see this on my cap?" I had the naval reserve cap on at the time. "If I were to desert from this you could not place any confidence in me; you may try, but it is of no use, I have got the wrong heart in me for this, so you have no need to try me any more." I said to Captain Corbett, "I stop in the ship till I get my money down on the capstan-head." He said, "Men, I have no money to pay you." I said, "You have sold the ship; what have you done with the money?" He said, "I have no money to pay you here;" he said I talked too much. I said, "I will see you when I get to England." The other royal naval volunteer on board the Sea King told me that Captain Corbett had offered him between £15 and £20 bounty, and about £10 per month, as near as I can recollect; he refused this, and in about half an hour all the men

[1] Appendix, vol. i, p. 478.

went, without being paid, on board the Laurel. The Laurel went to reconnoiter a ship which hove in sight, and came back and signalized that she was a Hamburg vessel. The Laurel laid off about an hour and a half, trying to persuade us to join the Sea King, Captain Corbett doing his uttermost to this end. When he found it no use they hoisted the boats and proceeded to Teneriffe, where we arrived on 20th, at night, and were not allowed to land until the 22d. When the steam was up, ready to depart, the chief officer came forward to the men of the Sea King and said, "If anybody asks you where you came from, say you are castaway seamen, and tell the consul the same, if required."

(Signed) JOHN ELLISON.

This deposition was made before me, and read over to the deponent.

(Signed) HENRY C. GRATTAN, *Consul.*

TENERIFFE, *October* 29, 1864.

Deposition of John Allen, R. N. V., 950.

I shipped in the Sea King for a voyage to Bombay and China; voyage not to exceed two years. After we got clear of the Channel we stopped the steam and proceeded under double-reefed topsails, dodging along for about three days, as far as I recollect, looking for something. We then made sail and carried on until we came to the island of Madeira, ran in past it at night, then rounded the vessel to, and stood out again till 4 the next morning; then got steam up and stood in for the harbor again. When we got abreast of the harbor we hoisted our number, which was answered by the Laurel steamboat lying at anchor. Directly altered the ship's head outward, and stood away from the harbor. Then we were followed by the Laurel steamer, which got under way directly we signalized her; then we laxed our steam until she came up to us; she then signalized to us when she was going. Immediately we set full steam on and made all sail. We ran for about two hours and a half, when the steamer rounded an island, and we followed her, taking in all sail; and going up under easy steam, brought the ship to an anchor in 17 fathoms. A boat from the little steamer came alongside of us, with the captain in her, and told our captain that he would be alongside of him in a few minutes. Then we commenced to secure our main-
[138] yard and get a pendant from the mast-head, and got the tackle hooked * on all ready for taking some heavy weight on board. Then the Laurel came alongside us, and we commenced slinging the cases until about 9 o'clock, likewise cases of powder, which was carried to the after cabin and stowed away; likewise large cases of shell and shot; also cases of rifles, and a great many cases of clothing. About 9 o'clock we went to our suppers. Went to work again about half past 9, and continued working till about 2 in the morning taking in kegs of powder; all lights ordered to be put out. They gave us a glass of grog and let us go to bed about 2 o'clock next morning. We were not asked to turn to work. After breakfast the hands were all to come aft. When we were all mustered aft, Captain Corbett waited for the person who proved to be the captain, and took charge of the ship. Then he addressed us in this manner: "Men, I have sold the ship; you who like to stop in her, you will get very good wages, and I will give you two months' pay." The men refused to do so. The new captain spoke to the men and told them he would give them two months' advance, £7 per month, and £10 bounty if any of them would join him. The third engineer and two or three of the firemen joined him. The new captain came to me while I was on the poop, it being my watch, and tried all he could to persuade me to go with him; offered me £14 a month to go as gunner's mate, which I told him plainly I dare not do, as I belonged to the English navy already, and I dare not go into any other. When they found they could not persuade me, they went to Captain Corbett to try if he could not advise me to do so. As I came off the poop, as all hands were standing round the cabin-door to see the captain, the captain, Captain Corbett, came out of the cabin and called me in, and told me I was very foolish to lose such a good chance. I told him I would not go for double the amount. He said when he went home he would not report me, nor let it be known where I was, if I would go, and I thanked him, and told him I would go home and report myself, and walked out of the cabin. The captain came on deck and the men asked him to give them three months' wages before they would leave the ship, which he refused to do. He said, there is the steamboat, and you can come along with me. He told us he would take us to England and discharge us, and if the law would allow us anything, he would give it to us. Seeing it was no use hanging on any longer, we put our things on board the steamboat and waited for the captain; as soon as he came on board the steamer shoved off, got her steam up, and at this time a sail hove in sight, and the captain lowered his boat and went on board the Sea King. Again pulled back as quick as he could, and put to sea, till he made out what the vessel was, and then stood back for the Sea King again to let her know it was all right. We hovered off and on till about 5 or 6 in the evening, as the captain could not get any of us to join. Some of the little steamer's hands went.

Turned away and made our passage towards Teneriffe. On arriving there were not allowed to land until the Laurel was ready for sea with her steam up.

The above has been read over to me, and is correct and true.

(Signed) JOHN his + mark ALLEN.

This deposition was made before me.

(Signed) HENRY C. GRATTAN, *Consul.*

TENERIFFE, *October* 29, 1864.

Deposition of Thomas Everall.

I signed as ordinary seaman in the Sea King, on or about the 8th of October; sailed from London, suppose to be going on a voyage to Bombay, &c., voyage not to exceed two years. When the vessel left there were two persons on board not belonging to the crew; one of these persons went ashore at Deal, the other proceeded on the voyage with us. About ten days after leaving London we hove to before the island of Madeira, after having been dodging about all night. We signaled to some vessel inside the harbor, and soon after a steamer came out; we accompanied her to an island about 50 miles from Madeira. As soon as we had let go our anchor the other vessel came alongside of us, and we began to transship guns and ammunition into the Sea King. We worked till late, and when we had done the mate came into the forecastle and told us that the Sea King was sold to the confederate government for a privateer, and if we liked to join we should get £4 10*s.* a month, two months' wages from the Sea King, two months' advance from the Shenandoah, (the name given to the Sea King,) and £10 bounty. The next morning, after we had finished the transshipment, Captain Corbett called the hands aft and corroborated the mate's statement, further saying that if we did not like to join he would give us two months' wages and pay our passage to England. We would not agree to this, so he said we must go in the steamer alongside, and we said we would settle it when we got to England. The new captain of the Sea King then offered us £6 per month and £15 bounty; then afterward raised his offers to £7 per month and £16 bounty, but only two lads joined. We then took our cloths on board the Laurel, and we left the Shenandoah in the evening; she hoisted the confederate flag. The passenger who went out with us was the first lieutenant. We arrived at Teneriffe next Thursday, and landed the Saturday following, and have since been living at the captain's expense, waiting for the mail-boat to take us home.

The above has been read over to me, and is correct and true.

(Signed) THOMAS EVERALL.

This deposition was made before me.

(Singed) HENRY C. GRATTAN, *Consul.*

TENERIFFE, *October* 29, 1864.

Deposition of George Kelly.

The Sea King sailed from London on the above voyage; as soon as she got clear of the Channel the steam was taken off, and some of the sails put her under easy canvas. We said, "There is something strange, or the captain would be more anxious to proceed on his voyage." We had one passenger on board who was afterward said to be the first lieutenant. The sail-maker was making a few hammocks for some of the men forward, and this passenger give him orders to make twelve; from this we [139] supposed *this person was not a passenger. On Monday night or afternoon came off Madeira and dodged off and on until Tuesday morning, then the captain gave orders to the engineer to put on full steam till he got outside the town. He hoisted signals; they were answered by a steamboat that was lying in-shore; then we kept off again for a couple of hours. The steamer which signalized us came out, and both steamers hoisted signals. We made all steam and sail toward the lee of an island; we anchored there, and the other steamer came alongside of us. The boatswain ordered us to secure the mainyard with a topsail sheet, and to put tackles for taking in three tons weight. We took in some heavy cases, and also four cases of shot and shell, which we knew to be such, as some tumbled about the decks. There were some gun-carriages in cases and some without; the cases containing the gun-carriages were partly open. Several bales of clothing and beds were transshipped. The captain came to us, and told us he had sold the ship; that the captain who now had the ship would give us £4 10*s.* a month, and £10 bounty, and he himself would give us two months' wages if we would join the ship. He then raised his terms to £6 and £7, £16 bounty. We refused to go in her. One engineer, a boy, and an ordinary seaman stopped, I believe. The captain told us to go on board the Laurel; that he would pay our passage home. We went on board. We received no wages. We dodged off and

on. The confederate flag was hoisted after we left the ship. We then came down to Teneriffe.

The above has been read over to me, and is correct and true.

(Signed) GEORGE his + mark KELLY.

This deposition was made before me.

(Signed) HENRY C. GRATTAN, *Consul.*

The master's statement was as follows:[1]

Statement of the circumstances under which the British vessel Sea King, official No. 48547, of London, has been sold by Mr. P. S. Corbett, the master thereof.

The above vessel left London on the 19th of October, 1864, bound to Bombay, calling at port or ports on the passage. The cargo consisted of coals and provisions for the voyage. There were no munitions of war whatever on board. I held a certificate of sale from the owner. On the 19th of October I sold the said ship, receiving the amount agreed upon as per bill of sale. I am not aware that by the said sale I in any way infringed the foreign-enlistment act.

(Signed) P. S. CORBETT.

This statement was made before me.

(Signed) HENRY C. GRATTAN, *Consul.*

TENERIFFE, *October* 29, 1864.

The law-officers of the Crown were forthwith requested to advise the government as to the course which should be taken in relation to the facts stated in the above report.

On the 14th November, 1864, the law-officers reported their opinion as follows:[2]

The law-officers of the Crown to Earl Russell.

LINCOLN'S INN, *November* 14, 1864.

MY LORD: We are honored with your lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that he was directed by your lordship to transmit to us a copy of a dispatch received on the 12th instant from Her Majesty's consul at Teneriffe, reporting the circumstances under which a number of men had been landed at that port from the British steamer Laurel, and the part taken by that vessel in the equipment at sea of the British steamer Sea King as a vessel of war for the government of the so-called Confederate States. That Mr. Consul Grattan states that he had taken the depositions on oath of four of the seamen of the Sea King, who were landed from the Laurel, and that he had deemed it proper to send Captain Corbett to England in safe custody to answer a charge of having infringed the foreign-enlistment act.

That your lordship had ascertained that the depositions had not yet reached the Board of Trade, and that your lordship was unable, therefore, at present, to submit them for our consideration; and Mr. Layard was directed, however, to send us at once the consul's dispatch, as well as a copy of a telegram received at the Board of Trade, announcing the arrival of twenty-two of the men at Liverpool, and to request that we would take these papers into consideration, and furnish your lordship with our advice as to the course which should be adopted by Her Majesty's government in this matter.

We are also honored with Mr. Layard's letter of this day's date, forwarding the depositions in the case of the Sea King.

In obedience to your lordship's commands we have taken these papers into consideration, and have the honor to report—

That we think the depositions taken at Teneriffe, and forwarded to Her Majesty's government by Mr. Consul Grattan, do not support the conclusion arrived at by the consul, that Captain Corbett (whom we understand to have been in command of the Sea King until she was handed over to certain agents of the Confederate States off Desertas) is chargeable with any offense against the foreign-enlistment act. To constitute an offense under the seventh (the equipment) clause of that act, there must have been an equipment, &c., with a view to employment in the belligerent
[140] service of a foreign *power, within some part of the United Kingdom, or of Her Majesty's dominions beyond the seas. In like manner, to constitute an offense (by a person not himself enlisting, &c.) under the second section such person must have been concerned within the United Kingdom, or in some part of Her Majesty's dominions elsewhere, in inducing or procuring others to enlist, &c., or to go, or to agree to go, or embark for some part of Her Majesty's dominions for the purpose or

[1] Appendix, vol. 1, p. 481.
[2] Ibid, p. 482.

with intent to be enlisted, &c.; and to constitute an offense under the sixth section, the master or other person in command of a ship or vessel in some part of the United Kingdom, or of Her Majesty's dominions beyond the seas, must knowingly and willingly have taken, or engaged to take, on board persons who had enlisted, or had agreed, &c., to enlist, &c., or who were departing from Her Majesty's dominions for the purpose and with the intent of enlisting, &c.

In every one of these cases the criminal act must have been committed within some part of "Her Majesty's dominions," a word which, as here used, does not, in our opinion, include a British ship on the high seas. But all the facts mentioned in these depositions appear to have taken place upon the high seas, beyond the limits of Her Majesty's territory. It is, indeed, not improbable that in the preparation of the Sea King for her voyage (if she went to sea under Captain Corbett's command from any port in this country) an offense against the seventh section of the act may have been committed. It is also possible that the officers and men, or some of them, may have been hired and taken on board in this country with a view to employment in the confederate service, so as to constitute offenses against the second and sixth sections, or one of them. But there is no evidence to support either of these conclusions in the depositions taken at Teneriffe by Consul Grattan.

All, therefore, that we can now advise your lordship to do is to direct that the twenty-two men, or some of them, who have just landed at Liverpool, be immediately examined by the solicitor to the treasury, or some person deputed by him, and their evidence reported to us; and that the solicitor be directed to obtain such other information as may be accessible in this country with respect to the previous history of the Sea King, the nature and circumstances of her equipment, the engagements of her crew, and the persons concerned therein, if there should be reason to believe that she sailed from this country with the view of being employed as a ship of war in the confederate service.

We have, &c.,
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

The lords commissioners of the treasury were requested to give immediate directions to their solicitor, in conformity with the concluding paragraph of the law-officers' report.

On the 19th November, 1864, Earl Russell received from Mr. Adams a note,[1] submitting for Earl Russell's consideration a copy of a letter from Mr. Dudley relating to the Sea King, together with copies of two depositions made by seamen who had shipped on board of that vessel in the port of London, and who had returned to England from Teneriffe in the mail steamer Calabar.

These depositions, though containing some statements which were clearly erroneous, confirmed, in general, the truth of those sent to the foreign office by Consul Grattan.

With reference to the original hiring, one of the deponents, John Hercus, deposed as follows:[2]

On or about the 25th of September last past, I and John Wilson, a ship's carpenter, were looking for a ship in London, and went on board the steamship Sea King, lying in the East India dock, and spoke to the chief mate. He pointed out the captain, whose name, we were informed, was Corbett, and we spoke to him about going on the ship. He asked us if we were single men, and said he wanted all single men if he could get them. He told me that the ship would be ready in ten days or a fortnight, and if I liked to wait he would give me the chance. He asked the carpenter if he could come to work at once, and he agreed to do so, and went to work the next morning. On or about the 5th of October I went to the Sailors' Home, and there signed articles as able seaman at £2 10*s.* a month for a voyage to Bombay, thence to any port or ports in the Indian Ocean, or China Seas, Japan or Australian Colonies, Pacific or Atlantic Oceans, and back to a port in the United Kingdom, voyage not to exceed two years. I received a note for a month's advance, which I got cashed at Isabella Calder's, No. 6 Bird street, East London.

On Friday, the 7th of October, I took my clothes on board, when we were told she was not going until Saturday morning, the 8th.

The other deponent, who was the John Wilson referred to in Hercus's

[1] Appendix, vol. 1, p. 484.
[2] Ibid., p. 486.

statement, deposed to a like effect as to both the terms and the mode of hiring.

With reference to the persuasions used in order to induce the men to enlist in the service of the Confederate States, the said John Wilson deposed as follows:[1]

After we had finished taking in the things from the Laurel, the mate came and called all hands aft, and said the captain wanted to see us. We all went and gathered round the cabin-doors, and Captain Corbett came out and said, "Well, men,
[141] I have sold the ship to the confederates; she is to *belong to their navy, to be a cruiser, to burn and destroy merchant-vessels and whalers in particular. She is not to fight, but merely to take prizes, and there will be a first-rate chance for any of you young men who will stop by the vessel, and I should advise you all to do it." The general reply made by the men was that we did not want anything to do with her. The new captain then came out of the cabin and asked if we would not join. He was dressed in a gray uniform. Captain Corbett introduced the man when he came out as the American officer who was to have the command of the ship, but did not mention his name; said he would pay the seaman £4 per month, and £10 bounty. One of the engineers, one of the firemen, and two of the seamen consented to join, and took the bounty and signed the articles. The officer in uniform, when he came out to us, announced that the Sea King was now the Shenandoah of the confederate navy. Liquor had been served among the men, during the time we were making the transfer, in profusion. Some were under its influence. It was brought round twice after we got through, and offered to the men. They made great efforts to induce the men to join. They raised the wages to £7 and £15 bounty for able seamen. They offered me £16 a month and £15 bounty. I declined to accept it, or to stop with them on any terms. A bucket of sovereigns was brought out on the deck to tempt the men to join. A portion of the crew of the Laurel joined. The person whom Captain Corbett introduced to us as the commander of the Shenandoah came out on the Laurel; there were a number of others who also came out on the Laurel: I should say about forty. We left them on board the Shenandoah. Some were acting as officers. One of them, pointing at the commander, who was standing on the deck, said he was Captain Semmes.

Hercus deposed to the same effect. Describing the inducements offered to the men, he said:[2]

I said I should not join, but four others said they would. One was a fireman, one an engineer, and two were ordinary seamen. They were under the influence of liquor, which had been supplied freely to all who would take it since we commenced taking in the guns. When they found us unwilling to go the wages and bounty were increased, until we were offered £7 a month, and £16 bounty, and to sign the articles for six months. A bucket containing sovereigns was brought on deck, and the officers took up handfuls to tempt the men on deck. The four who consented to go went into the cabin, and I afterwards saw one of them with twenty-eight sovereigns in his hand.

He added:

When the American officers who came from the Laurel to the Sea King were trying to persuade us to go in her, they said, "You had better go in the Shenandoah," (which the Sea King was to be called.) They promised us the best of living, and said that the best of the provisions would be taken out of the prizes, and all that were then aboard which were no good would be thrown overboard.

It was stated by the deponents that the officers who had gone out in the Sea King, including the captain, returned in the Calabar to England. The only exception was one of the engineers. The statement that Captain Semmes was on board of the Sea King was erroneous.

The copies of depositions sent by Mr. Adams were immediately laid before the law-officers of the Crown, who, on the 1st of December, 1864, advised thereon as follows:[3]

The law-officers of the Crown to Earl Russell.

LINCOLN'S INN, *December* 1, 1864.

MY LORD: We are honored with your lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that, with reference to our report of the 15th November, he was directed by your lordship to transmit to us a letter from Mr. Adams,

[1] Appendix, vol. i, p. 488.
[2] Ibid., p. 487.
[3] Ibid., p. 490.

inclosing copies of the depositions of two men who lately formed part of the crew of the Sea King, and to request that we would take these papers into our consideration, and favor your lordship with such observations as we might have to offer thereupon.

Mr. Hammond was also pleased to state that we should observe from the accompanying draught of a letter to the treasury that the lords commissioners have been requested to instruct their solicitor to take the depositions, and to proceed in this case in other respects in the manner recommended in our report; and that a dispatch of Mr. Consul Grattan was also inclosed.

In obedience to your lordship's commands we have taken these papers into our consideration, and have the honor to report—

That, in our opinion, the depositions now forwarded by Mr. Adams are sufficient to prove that Captain Corbett did in this country engage and procure the deponents to serve as sailors on board the Sea King, which ship, from the whole of the evidence in the case, we infer to have been then a vessel intended by him to be used (after she should have been taken to the Azores) in the confederate service. These facts raise questions similar to those which were involved in the cases of the seamen on board the Georgia and Rappahannock, except that none of these particular deponents accepted the confederate service when the true object of the voyage was disclosed to them. Those questions, upon the construction of the act, are not free from difficulty; but in some of the other cases convictions have been obtained and submitted to; and we think that, even if there were no other point arising upon his acts when he handed over the
[142] ship to her confederate commander, it would be proper, upon this evidence, *that Captain Corbett should be prosecuted for a violation of the second section of the act, by procuring, or attempting to procure these men, and others unknown, to serve and be employed, &c., or to go and embark from Liverpool for the purpose, or with intent to serve or to be employed, &c., contrary to that section.

We further think, on more deliberate consideration, that if the Sea King ought to be deemed (as, *prima facie*, we think she may be) to have been still a British ship when Captain Corbett endeavored to induce the men on board her to accept the confederate service, the question whether her deck was not then "a place belonging or subject to Her Majesty" is a serious one, which ought also to be raised by the indictment. In our former report, we stated that we did not think a British merchant-ship at sea was included within Her Majesty's "dominions," in the sense of the act; but in the second clause there are also the other and larger words above noticed, to which we did not then advert, and which might, perhaps, receive a more extensive construction.

We have, &c.,
(signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Proceedings were accordingly directed to be taken against the master of the Sea King. He was arrested in January, 1865, brought before a magistrate, committed for trial, and in November of the same year tried before the lord chief justice and a special jury, on the charge of having, either within the United Kingdom or on the high seas, enlisted British subjects, or incited them to enlist in the service of the Confederate States.

The evidence produced at the trial was very conflicting. Several witnesses who had sailed in the ship were examined for the defense. These witnesses contradicted on material points the evidence given in support of the prosecution, and the statements contained in the foregoing depositions, and stated on oath that Corbett took no part in the endeavors made to induce the men to enlist, and that the persuasion used was used solely by the Americans who presented themselves as confederate officers. The chief justice put to the jury the question whether the defendant did, in fact, attempt to enlist the men or procure them to enlist, reserving any questions of law which might be raised on the part of the defense, in case the answer should be in the affirmative. The jury returned a verdict of "not guilty."

The first mate of the Sea King, Charles Easman, who was examined for the defense, gave evidence, in the course of his examination, as follows:

I was second mate of the Sea King when I sailed in her on her first voyage. I was first mate on her when she was sold to the confederates. Mr. R. Wright was her

owner. She was to go to Bombay, and nothing was said as to her ultimate destination. She took in 850 tons of coal. It was an ordinary cargo, and coals at that time paid the best freight. She had forty-five hands the first voyage, and forty-seven the second.

The steward of the ship, John R. Brown, who was also examined for the defense, stated that when she left London there was nothing out of the usual course in her stores which might lead to the supposition that she had any other destination than the East Indies.

In cross-examination, he said, "Steamers often take cargoes of coal to the East Indies. She had nearly as many coals on board as she could carry. It is not an unusual thing to send a power of sale with ships going on a long voyage."

With the view of obtaining further information respecting the Sea King, Mr. Hammond, on the 27th January, 1865, wrote to Messrs. Robertson & Co., of London, who had originally been part owners and managing owners of the ship. Mr. Hammond's letter and the answer returned by Messrs. Robertson & Co. were respectively as follows:[1]

Mr. Hammond to Messrs. Robertson & Co.

FOREIGN OFFICE, *January* 27, 1865.

GENTLEMEN: I am directed by Earl Russell to state to you that his lordship has been informed that the Shenandoah, a full-rigged ship of 1,100 tons and 250 horse-power, now stated to belong to the government of the so-called Confederate States, was formerly in the possession of your firm, at which time she bore the name of the Sea King; and I am directed to inquire whether you have any objection to inform his lordship of the circumstances under which you sold the vessel, and particularly whether she was sold to an agent of the so-called confederate government.

I am, &c.,
(Signed) E. HAMMOND.

[143] **Messrs. Robertson & Co. to Mr. Hammond.*

5 NEWMAN'S COURT, CORNHILL, LONDON, *January* 28, 1865.

SIR: We beg to acknowledge receipt of your letter of yesterday, and to inform you that the Sea King was sold by us to a British subject, a Mr. Wright, of Liverpool, through the agency of Messrs. Curry, Kellock & Co., of Liverpool, brokers, in the usual way, and that the bill of sale, &c., passed through Her Majesty's customs in due order.

After the sale of the vessel we had nothing whatever to do with her, and she remained in dock for some weeks, and was entered out for Bombay, which port we were informed was to be her destination.

We are not aware, nor have we any knowledge, that any confederate agent had anything to do with the ship during her stay in this country.

The Sea King was only 150 horse-power, and not, as stated in your letter, 250.

We have, &c.,
(Signed) ROBERTSON & CO.

On inquiry it appeared that the Sea King was a screw-steamer, built at Glasgow in the year 1863, with a view to employment in the China trade. She was originally owned in shares by several part owners, Messrs. Robertson & Co., of London, acting as managing owners. She sailed from London, in November, 1863, for New Zealand and the China Seas, carrying troops for Her Majesty's government to Auckland, whence she proceeded to Hankow, and returned to London with a cargo of tea. In September, 1864, she was sold to a Mr. Richard Wright, a ship-owner of Liverpool. Wright, on the 7th November, 1864, granted a certificate of sale to P. S. Corbett, the master of the ship, by which he was empowered to sell her at any port out of the United Kingdom for a price not less than £45,000, within six months after the date of the certificate. When originally fitted out by Robertson & Co., and when sold by them to Wright, she had on board two ordinary 12-pounder carronades intended

[1] Appendix, vol. i, p. 497.

only for use as signal-guns and for other uses common in merchant-vessels. These were the two 12-pounder guns hereinafter referred to. The crew of the Sea King signed articles for a voyage from London to Bombay, (calling at any ports or places on the passage,) and any other ports or places in India, China, or Japan, or the Pacific, Atlantic, or Indian Oceans, trading to and from as legal freights might offer, until the return of the ship to a final port of discharge in the United Kingdom or continent of Europe, the voyage not to exceed two years.

From what has been stated above, it will have been seen that the Shenandoah was a steamship originally named the Sea King, which had been built not for war but for commercial purposes; that she had been employed in the China trade, and was at the time when she sailed from the port of London, in October, 1864, registered in the name of a Liverpool merchant; that she cleared and sailed as for a trading voyage; that her crew were hired and signed articles for such a voyage, and that they shipped and went to sea without suspecting that she was intended for any other destination; that there was nothing in her cargo, stores, or otherwise to excite suspicion; that before or at the time of her arrival in the vicinity of the Madeira Islands she was sold and transferred by her owner to the government of the Confederate States; that she took on board, while at sea, her commander and officers, all of whom were American citizens, with a small handful of men as a crew; that the officers and crew who had brought her out from London left her, with very few exceptions, and returned to England; that in order to induce her original crew to take service in her, solicitations and inducements of every kind were employed by her commander and officers, but without success; that, after being transferred as aforesaid, she was armed for war either on the high seas or in Portuguese waters, and that she thence commenced her cruise under the name of the Shenandoah, given to her by her new owners.

It will have been seen, also, that no representation had been made to Her Majesty's government respecting her by Mr. Adams, and that no information about her was ever conveyed to or came into the possession of the government previous to the report received on the 12th November, 1864, from Her Majesty's consul at Teneriffe.

Lastly, it will have been observed that immediately on the receipt of that report, the government consulted its advisers on the question whether legal proceedings could be instituted against the master of the ship who had sailed with her from London, for his share in the transaction, and that he was afterward indicted and brought to trial, but was acquitted by the jury, the evidence as to his acts being doubtful and conflicting.

The steamer Laurel, which conveyed to the Madeira Islands the guns destined for the Shenandoah, and her commander and officers, had on the 24th October, 1864, cleared from the port of Liverpool for Matamoras via Havana and Nassau, and her crew were shipped for that voyage.

Her clearance stated that she had a crew of 40 men, no passengers,
[144] and *sundry packages of British and foreign goods free of duty.

She is believed to have been sold while abroad to the government of the Confederate States.

Mr. Adams subsequently, on the 7th April, 1865, wrote to Earl Russell, inclosing and referring to a letter addressed to Mr. Seward by the consul of the United States at Rio Janeiro, in which it was stated that several United States ships had been captured and destroyed by the Shenandoah. In this note Mr. Adams wrote as follows:[1]

[1] Appendix, vol. i, p. 501.

I am by no means insensible to the efforts which have already been made, and are yet making, by Her Majesty's government to put a stop to such outrages in this kingdom and its dependencies. Neither can I permit myself to doubt the favorable disposition of her ministers to maintain amicable relations with the Government which I represent.

While perfectly ready to bear testimony to the promptness with which all the numerous remonstrances and representations which it has been my painful duty heretofore to submit have been met and attended to by your lordship, it is at the same time impossible for me to dispute the fact that the hostile policy which it is the object of all this labor to prevent, has not only not been checked, but is even now going into execution with more and more complete success.

He proceeded to dwell upon the losses which the commerce and navigation of the United States had sustained, and the circumstances under which these losses had been inflicted, and to observe in effect that such injuries must tend to give rise to "the gravest of complications between any two nations placed under like circumstances." He added:

That in this case no such event has followed has been owing, in the main, to a full conviction that Her Majesty's government has never been animated by any agressive disposition toward the United States; but, on the contrary, that it has steadily endeavored to discountenance and, in a measure, to check the injurious and malevolent operations of many of her subjects. But while anxious to do full justice to the amicable intentions of Her Majesty's ministers, and on that account to forbear from recourse to any but the most friendly and earnest appeals to reason and to their sense of justice for the rectification of these wrongs, it is impossible to resist the conviction that heretofore their measures, however well intended, have never proved effective to remedy the evil complained of. Prompt to acquit them of any design, I am reluctantly compelled to acknowledge the belief that practically this evil had its origin in the first step taken, which never can be regarded by my Government in any other light than as precipitate, of acknowledging persons as a belligerent power on the ocean before they had a single vessel of their own to show floating upon it. The result of that proceeding has been that the power in question, so far as it can be entitled to the name of a belligerent on the ocean at all, was actually created in consequence of the recognition, and not before; and all that it has subsequently attained of such a position has been through the labor of the subjects of the very country which gave it the shelter of that title in advance. Neither is the whole case stated even now. The results equally show that the ability to continue these operations with success during the whole term of four years that the war has continued, has been exclusively owing to the opportunity to make use of this granted right of a belligerent in the courts and the ports and harbors of the very power that furnished the elements of its existence in the outset.

Mr. Adams did not assert that in respect of the departure, equipment, or armament of the Shenandoah there had been any negligence or breach of international duty on the part of Her Majesty's government; nor could he have done so with any show of reason. The substance of his complaint, as regarded the acts or omissions of the government, was that Great Britain had declared herself neutral in the war, and had recognized the Confederate States as a belligerent, and that confederate vessels had been suffered to enter and make use of the ports and harbors of Great Britain and her colonies equally with vessels of the United States.

On the 25th January, 1865, the Shenandoah arrived at Port Philip, in the colony of Victoria, and anchored in Hobson's Bay; and her commander immediately sent one of the officers of the ship to present the following letter to the governor of the colony:[1]

Lieutenant Waddell to Governor Sir C. H. Darling.

CONFEDERATE STATES STEAMER OF WAR SHENANDOAH,
Port Philip, January 25, 1865.

SIR: I have the honor to announce to your excellency the arrival of the Confederate States steamer Shenandoah, under my command, in Port Philip this afternoon, and also

[1] Appendix, vol. i, p. 500.

to communicate that the steamer's machinery requires repairs, and that I am in want of coals.

I desire your excellency to grant permission that I may make the necessary repairs and supply of coals to enable me to get to sea as quickly as possible.

I desire also your excellency's permission to land my prisoners. I shall observe the neutrality.

I have, &c.,
(Signed) JAS. J. WADDELL.

[145] *The governor (Sir C. H. Darling) caused the bearer of the letter to be informed that it should be answered on the following day. The governor had not, at this or any other time, any personal intercourse with the commander of the Shenandoah.

Commander Waddell's application was, on the 26th January, brought by the governor before the executive council of the colony for consideration. The advice given by the council to the governor thereon is set forth in the subjoined extract from the minutes of its proceedings:[1]

Dispatches from the right honorable the secretary of state, covering the Queen's proclamation of neutrality, and all instructions and orders which have, from time to time, been issued by command of Her Majesty, through the secretary of state, to the governors of Her Majesty's colonies and possessions, for their guidance during the continuance of hostilities on the North American continent, as well as official correspondence and papers connected with the proceedings of the confederate steamship Alabama at Her Majesty's colony of the Cape of Good Hope, are laid before the council, and read by the clerk.

After careful consideration of these instructions and papers, the council advise that the honorable the commissioner of trade and customs, writing in the name of his excellency the governor, should acquaint the commander of the Shenandoah—

1. That the vessel under his command will not be allowed to quit the anchorage in Hobson's Bay within twenty-four hours after any vessel belonging to the Federal States shall have left the port, and further inform him that, in case he should infringe this rule, his government will be held responsible by that of Great Britain for violating the neutrality of British waters.

2. That the commander of the Shenandoah be requested to communicate to the government of Victoria the nature and extent of the repairs of which he states his vessel to be in need; and that he be informed that permission will be granted for the Shenandoah to remain in the waters of the colony a sufficient time to receive the provisions or things necessary for the subsistence of her crew—but not beyond what may be necessary for immediate use—and to effect her repairs; and that when the government of Victoria are in possession of the nature and extent of the supplies and repairs which are necessary, the commander of the Shenandoah will then be informed of the time which his vessel will be permitted to remain in the waters of the colony.

3. That, in reply to that part of his letter which refers to prisoners, the commander of the Shenandoah be requested to communicate to the government of Victoria the names of the prisoners, and any other particulars relating to them which he may be willing to supply.

His excellency, concurring with the advice which has been tendered to him, directs the honorable the commissioner of trade and customs to address the commander of the Shenandoah in the above-recited terms.

The council further advise his excellency to authorize a communication being made to the United States consul at Melbourne, informing him of the application which has been made by the commander of the Shenandoah for permission to land prisoners, and stating that the government are desirous of knowing whether the consul will undertake to receive and provide for them.

In conformity with the advice of the consul, communications were addressed, by the governor's direction, to the commander of the Shenandoah and to the consul of the United States at Melbourne, Mr. W. Blanchard.

The consul replied that he had already made provision for the persons brought in as prisoners by the Shenandoah. He addressed several letters to the governor, protesting against the admission of the vessel into the port of Melbourne, and calling on him to cause her to be seized, as

[1] Appendix, vol. i, p. 511.

guilty of piracy. The reasons on which the consul relied were stated by him in the following letter:[1]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, January 28, 1865.

SIR: I am in receipt of a communication from C. J. Tyler, esq., your excellency's aide-de-camp, dated to-day, informing me that your excellency has submitted my dispatches of the 26th and 27th January instant to the consideration of your legal advisers, and that your excellency's decision, when made, will be forwarded to me.

Evidence being daily accumulating in this office in support of the reasons for the protests I had the honor to forward to your excellency, I now beg leave to call your attention specially to the following:

1. That the Sea King, *alias* Shenandoah, now in this port, and assuming to be a war-vessel, is a British-built ship, and cleared from a British port as a merchantman, legally entering no port until her arrival here, where she assumes to be a war-vessel of the so-styled Confederate States; that any transfer of said vessel at sea is in violation of the law of nations, and does not change her nationality.

2. That inasmuch as Her Majesty's neutrality proclamation prohibits her subjects from supplying or furnishing any war material or ship to either belligerent, this vessel, having an origin as above, is not entitled to the privileges accorded to the belligerents by said proclamation.

[146] *3. That being a British-built merchant-ship, she cannot be converted into a war-vessel, upon the high seas, of the so-styled Confederate States, but only by proceeding to and sailing in such character from one of the ports of the so-styled confederacy.

4. That it is an established law that vessels are to be considered as under the flag of the nation where built, until legally transferred to another flag.

5. That said vessel sailed as an English merchant-ship from an English port, and cannot, until legally transferred, be considered as a man-of-war.

6. That not being legally a man-of-war, she is but a lawless pirate, dishonoring the flag under which her status is to be established, and under which she decoys her victims.

7. That her armament came also from Great Britain in English vessels, (the Laurel and Sea King, now Shenandoah,) both of which cleared under British seal, or, if without it, in violation of established law.

8. That as such she has committed great depredations upon ships belonging to citizens of the United States, making her liable to seizure and detention, and the crew guilty of piracy.

I cannot close this without further protesting in behalf of my Government against the aid and comfort and refuge now being extended to the so-styled confederate cruiser Shenandoah in this port.

I have, &c.,
(Signed) WM. BLANCHARD.

The propositions asserted by the consul, that the Shenandoah, having been built as a merchant-ship in Great Britain, and having sailed as such from a British port, could not subsequently acquire the character of a belligerent ship of war, unless she had in the interval proceeded to, and sailed from, a port in the Confederate States, and that she was in the view of international law a pirate, were erroneous.

In answer to the consul's letter above set forth, the following letter was addressed to him by order of the governor:[2]

Mr. Tyler to Mr. Blanchard.

PRIVATE SECRETARY'S OFFICE,
Melbourne, January 30, 1865.

SIR: I am directed by his excellency the governor to acknowledge the receipt of your letter of the 28th instant, and to acquaint you that, having fully considered the representations contained in that communication and in your previous letters of the 26th and 27th instant, and advised with the Crown law-officers thereon, his excellency has come to the decision that, whatever may be the previous history of the Shenan-

[1] Appendix, vol. i, p. 592. [2] Ibid., p. 593.

doah, the government of this colony is bound to treat her as a ship of war belonging to a belligerent power.

I have, &c.,

(For Private Secretary,)
(Signed) C. J. TYLER.

The subjoined extracts from minutes of the proceedings of the executive council of the colony show what subsequently occurred in relation to the Shenandoah and the course pursued with reference to her by the government of the colony:[1]

Extract from the minutes of the council.—Minute 65/7 of the proceedings on the 30th of January, 1865.

At the close of the ordinary business of the council, the honorable the commissioner of trade and customs submits to his excellency a communication from the commander of the Shenandoah, dated 28th January, 1865—in reply to the letter which was addressed to him on the 26th instant—in which Lieutenant Waddell states that he has not been able up to the present time to inform the government of the extent of the repairs which are required to be made to his vessel, and expressing his fear that the damages will prove to be more serious than he had anticipated; but that as soon as a diver, whom he had employed for the purpose, has been able to inspect the screw-shaft below water, he will lose no time in communicating with them. This letter was, shortly afterward, followed by another from Messrs. Langlands, Brothers & Co., of the Port Philip foundery, and dated the 30th January, addressed to Lieutenant Waddell, which that officer indorsed, as forwarded to the honorable the commissioner of trade and customs, for the information of the governor, and with a request that it might be returned.

In this letter Messrs. Langlands report that it was absolutely necessary to put the vessel on the government slip, as, after inspection by the diver, he reports the lining of the outer sternbush to be entirely gone, and requires to be replaced, and that, as three days more will elapse before the vessel can be slipped, Messrs. Langlands state they will not be able to accomplish the repairs within ten days from the date of their letter.

After considering these letters, the council advise his excellency to authorize another communication to be addressed to the commander of the Shenandoah, drawing his attention to the circumstance that he had not as yet replied to the request for [147] information as to the nature of the supplies of which he states he is in need for the subsistence of his crew, nor had he furnished the list of the prisoners on board; and that he be further informed that the governor had appointed a board of practical men to examine the Shenandoah, and report whether that vessel is in a fit state to proceed to sea, or whether any, or if any, what, repairs are necessary. For this purpose his excellency appoints Mr. C. B. Payne, secretary naval survey board; Mr. Douglas Elder, superintendent marine yard; and Mr. Alexander Wilson, government engineer, to be a board to proceed on board the Shenandoah, and report accordingly.

His excellency then lays before the council three letters which have been addressed to him by the United States consul at Melbourne, dated, respectively, the 26th, 27th, and 28th of January, 1865, protesting against the rights of a belligerent being granted to the Shenandoah, and further protesting against the aid and comfort and refuge now being extended to that vessel.

Having referred these letters to his legal advisers, his excellency received from them the following opinion:

"We have the honor to acknowledge the receipt of three letters addressed to his excellency the governor by the consul of the United States of America, dated, respectively, the 26th, 27th, and 28th instant.

"We are of opinion that there is no evidence of any act of piracy committed by any person on board the vessel called the Shenandoah. This vessel purports to be, and we think she should be treated as, a ship of war belonging to a belligerent power.

(Signed) "ARCHD. MICHIE,
"GEO. HIGINBOTHAM,
"*Crown Law-Officers.*

"JANUARY 30, 1865."

His excellency states that he had replied to the United States consul to the effect that, having given an attentive consideration to his letters, and having consulted with the law-officers of the Crown, he had come to the decision that the government of this colony were bound to treat the Shenandoah as a ship of war belonging to a belligerent power.

His excellency then consults the council on the only point upon which he thought any doubt could arise, viz, whether it would be expedient to call upon the lieutenant

[1] Appendix, vol. i, p. 514.

commanding the Shenandoah to show his commission from the government of the Confederate States, authorizing him to take command of that vessel for warlike purposes.

After brief consultation a majority of his advisers tender their opinion that it would not be expedient to do so.

Extract from the minutes of the council.—Minute 65/8 of the proceedings on the 6th February, 1865.[1]

On concluding the ordinary business of the day his excellency informs the council that since their last meeting a communication had been received from the commander of the Shenandoah, dated 30th January, stating that the immediate supplies required for the officers and crew under his command consisted of fresh meat, vegetables, and bread daily, and certain sea supplies which are enumerated, and that with respect to the list of prisoners, all the persons—whom on the high seas he considered to be his prisoners—had left his ship in shore boats, without his knowledge, soon after his arrival in the port. The honorable commissioner of trade and customs had been authorized to reply to Lieutenant Waddell that permission was granted to him to ship, in reasonable quantities, the provisions and supplies which he had enumerated, and that it was necessary for him to place his paymaster in communication with the collector of customs as to the quantities and particulars in detail. The request formerly made to Lieutenant Waddell to furnish the numbers and particulars of his prisoners was also renewed in this communication, and he was informed that, although the number in this instance was understood to be small, yet this case might form a precedent for future guidance in any other case where it might be desired to land a larger number of prisoners in violation of municipal or other laws or regulations in force in this colony.

To this letter Lieutenant Waddell replied, on the 1st February, that the number of the prisoners he had brought into the port were eleven, two being females; that they were captured serving in the American bark Delphine, which vessel he destroyed; and on arrival in this port they left the Shenandoah of their own free will—without consulting the regulations enforced in this colony—unmolested, unassisted, and not in any boat belonging to the ship. He further added that he was extremely anxious to get the Shenandoah to sea.

The report of the board of survey on the repairs required by the Shenandoah is then laid before the council and read.

On receiving this report, his excellency states that he had directed another letter to be addressed to Lieutenant Waddell, informing him that, as it was evidently necessary from the report that his vessel should be placed on the slip, it was presumed that he would proceed promptly with the necessary arrangements; and it was further pointed out to him that the slip—which Messrs. Langlands, in their communication, had termed the government slip—was not in the possession or under the control of the government; that it was originally built by the government, but had for many years been leased to various parties, and, therefore, Lieutenant Waddell's arrangements must be made with the present lessees.

The commissioner of trade and customs then acquainted his excellency that he had issued instructions to the principal officers in Hobson's Bay to furnish daily
[148] reports of the Shenandoah, in *obedience to a minute of his excellency of the 3d instant, and that he had enjoined upon these officers the necessity of performing this service without unseemly obtrusion or interference, but that any apparent abuse of the permission to make repairs or to take in supplies was to be reported; and their attention was especially directed to the concluding paragraph of the minute relating to any extension of the armament of the Shenandoah, or to any attempt to render her present armament more effective.

Mr. Francis further states that an application had been made this day to the collector of customs for permission to land certain surplus stores, accompanied by a declaration that none of these stores had been captured, but that they all came into the possession of Lieutenant Waddell with the vessel. On consultation with the council, his excellency directs this application to be referred for the opinion of the Crown law-officers, whether such a permission should be granted, and whether the forty-fourth section of the act 21 Vict., No. 13, is applicable to the case.

His excellency then directs Mr. Francis to address another letter to Lieutenant Waddell, and inform him that, as his vessel has been twelve days in the port already, with permission to lay in provisions and to effect necessary repairs, it is now desired that he should name the day upon which he will be prepared to proceed to sea, and that, after carefully considering the position of Great Britain as strictly neutral in the present contest on the North American continent, the government of Victoria cannot grant him the use of any appliances which are the property of the government, nor can it render any assistance, either directly or indirectly, toward effecting the repairs of his vessel.

[1] Appendix, vol. i, p. 516.

The report of the board of survey referred to in the foregoing minute was as follows:[1]

Report of survey held on board the confederate screw-steamer Shenandoah.

MELBOURNE, *February* 1, 1865.

We, the undersigned, in pursuance of instructions received from his excellency the governor, proceeded on board the confederate screw-steamer Shenandoah this morning, at 10 a. m., for the purpose of examining her with a view of reporting whether that, vessel is now in a fit state to proceed to sea, or whether, and what, repairs are necessary, have the honor to report:

1st. That the Shenandoah is not in a fit state to proceed to sea as a steamship.

2d. That repairs are necessary.

3d. That the part or parts requiring repair being the inner stern-post bearing of the screw-shaft, the extent of damage cannot be ascertained without the vessel being slipped.

(Signed) CHARLES B. PAYNE.
ALEX. WILSON,
Engineer-Surveyor.
DOUGLAS ELDER,
Superintendent of Marine Yard.

The governor's minute (or memorandum) of the 3d February, referred to in the foregoing minute of proceedings, was as follows:[2]

Memorandum for the commissioner of trade and customs.

I have to request the honorable the commissioner of trade and customs will be so good as to make arrangements for obtaining daily reports of the progress of the repairs and provisioning of the Shenandoah, and communicate the information obtained to me.

I am sure that the honorable commissioner will take every precaution in his power against the possibility of the commander of that vessel in any degree extending its armament or rendering the present armament more effective.

C. H. D.

TOORAK, *February* 3, 1865.

On the 10th February, 1865, the consul wrote to the governor[3] inclosing a deposition on oath by one John Williams, who had been a prisoner on board the Shenandoah, and had escaped from her by swimming ashore on the 6th February. In this deposition the said John Williams stated that fifteen or twenty men had joined the ship since her arrival in port, and were concealed in various parts of her, and that three others, who were wearing the ship's uniform, had also come aboard since her arrival.

The course pursued by the colonial government with reference to this and other matters relating to the Shenandoah is stated in the subjoined further extract from the minutes of the executive council:[4]

Extract from the minutes of the council.—Minute 65/9 *of the proceedings on the* 13*th February* 1865.

His excellency states that Lieutenant Waddell had replied, to the communication which it had been agreed to address him at their last meeting, that he could [149] not name a day for proceeding to sea *until his ship is taken on the slip, when the amount of repairs which may be necessary could be ascertained and the time estimated in which they could be effected. He further states that the recent gales had prevented him from lightening the ship to the necessary draught preparatory to placing her on the slip, but that he hoped to do so on the following morning.

The opinion of the attorney-general on the application which has been made for permission to land certain surplus stores from the Shenandoah, is also laid before the council.

It is to the effect that the permission cannot be granted by the government of Victoria, consistently with a strict observance of the rules prescribed for the main-

[1] Appendix, vol. i, p. 518.
[2] Ibid., p. 529.
[3] Ibid., p. 606.
[4] Ibid., p. 520.

tenance of neutrality; and his excellency informs the council that he has authorized a communication to the commander of the Shenandoah to that effect.

The further report of the board of survey on the Shenandoah, after viewing that vessel on the slip, is also submitted and considered.

His excellency then states to the council that, in consequence of a letter which he had received from the United States consul, dated the 10th instant, and inclosing a testimony on oath of one John Williams, he had deemed it his duty to refer it for the consideration of the law-officers of the Crown; as, presuming the statements therein contained to be correct, it would appear that the commander of the Shenandoah was taking advantage of the aid and comfort which had been afforded to him in this port, to increase the number of his crew by enlisting British subjects, in contravention of the foreign-enlistment act.

In consequence of this reference the law-officers of the Crown had directed the attendance of the man John Williams, and that he had, with other men, attended that morning at the Crown law-offices, and had made statements to the effect that a number of men, representing themselves to be Englishmen, had gone on board the Shenandoah since her arrival in this port with the intention of joining her, and were now concealed on board.

The law-officers being of opinion that there was sufficient evidence to take steps for prosecuting, had instructed the police to lay informations against these men for a misdemeanor, and to apply for a warrant for their apprehension.

On consultation with the council, it was not considered necessary by his excellency to take any further steps in the matter until the result of the police-office proceedings was known; but Mr. Francis is instructed again to inquire, by letter, when Lieutenant Waddell would be ready to proceed to sea.

A report from the detective police at Sandridge, of this day's date, on matters relating to the Shenandoah, is laid upon the table of the council; and as, from information which had reached the government, some suspicion had been attached to the movements of a vessel called the Eli Whitney, now lying in the bay, the honorable the commissioner of trades and customs undertakes that her movements shall be carefully watched.

The honorable the attorney-general then submits to his excellency depositions taken on oath by eleven persons before the consul of the United States, in Melbourne, which depositions have been placed in his hands by the consul.

A true extract.

(Signed) J. H. KAY,
Clerk of the Council.

The opinion of the attorney-general of the colony, referred to in the foregoing minute, was as follows:[1]

Section 44 of act No. 13 is not applicable, in my opinion, to this case. Even if the Shenandoah be regarded as a ship having a commission from a foreign state within the meaning of the section, the section does not authorize the master of such a ship to land goods without submitting to the rules of the customs, but imposes a penalty on him for not delivering an account, in writing, of the quality and quantity of goods, &c., on board. The account is not stated to have been delivered; and if it had been, the master is not empowered to land the goods, although the customs officers have the right to do so, subject to the regulations in force respecting Her Majesty's ships.

I am not aware that there is anything in the customs act that would make the relaxation of the customs regulations now asked for absolutely illegal. But I am of opinion that the permission that is sought cannot be granted consistently with a strict observance of the rules prescribed for the maintenance of neutrality.

(Signed) GEO. HIGINBOTHAM.

CROWN LAW-OFFICES, *February* 6, 1865.

The further report of the board of survey, also referred to in the foregoing minute, was as follows:[2]

Further report on the confederate steamship Shenandoah.

The Shenandoah having been hauled up on the patent-slip at Williamstown, we, the undersigned, proceeded to hold a survey on the damage sustained to the forward bearing of the outer length of the screw-shaft, and find as follows, viz:

1st. The lignum-vitæ staves, forming the bearing for the forward end of the outer length of the screw-shaft, are entirely displaced.

2d. That the inner stern-post bracket, in which the staves of lignum-vitæ are

[1] Appendix, vol. i, p. 521.
[2] Ibid., p. 522.

[150] fitted, forming also the support for the foremost end of the screw-frame, is fractured on the starboard side to the extent of about 4 inches.

3d. That these repairs (necessary to render the steamship seaworthy) can be effected in or about five clear working-days from this date.

(Signed) CHARLES B. PAYNE,
Late Lieutenant, Royal Navy.
ALEX. WILSON,
Engineer-Surveyor.
DOUGLAS ELDER,
Superintendent, Marine Yard.

WILLIAMSTOWN, *February* 10, 1865.

On the same 13th of February a warrant was granted by a magistrate at Williamstown for the apprehension of a man known as James Davidson, or "Charley," who was stated to be concealed on board the Shenandoah. The superintendent of police, who was charged with the execution of the warrant, went on board the ship, but was not permitted to search her, and was unable to apprehend the man of whom he was in quest. The superintendent reported as follows to the chief commissioner of police:[1]

Superintendent Lyttleton to the chief commissioner of police, Melbourne.

POLICE DEPARTMENT, SUPERINTENDENT'S OFFICE,
Melbourne, February 14, 1865.

SIR: I have the honor to inform you that, acting on your instructions, I proceeded last evening to the confederate war-steamer Shenandoah, with a warrant for the arrest of a man known as Charley, stated to have illegally engaged himself on board of the vessel. I asked for Captain Waddell, but was informed that he was not on board. I then asked for the officer in charge, saw him, and obtained permission to go on board. I told the officer my business, and requested that he would allow me to see the men on board, in order that I might execute my warrant. He refused to allow me. He then showed me the ship's articles, and asked me to point out the name of the man, which I was unable to do. I showed him my warrant, which he looked over, and returning it to me he said, "That is all right, but you shall not go over the ship." He told me I had better return when the captain was on board; but as he could not say at what hour he would probably return, I told him that I would see the captain the following day.

This morning I went again to the Shenandoah, and, after stating my business, was allowed on board. I told Captain Waddell that I was informed he had persons on board who had joined his vessel here, and that informations having been sworn to that effect, I had a warrant with me. He said, "I pledge you my word of honor as an officer and a gentleman that I have not any one on board, nor have I engaged any one, nor will I while I am here." I said I understood that the persons I wanted were wearing the uniform of the Confederate States, and were working on board. This he distinctly denied. He offered to show me the ship's articles, but I declined, and told him that I had seen them last evening. I then asked him to allow me to go over the ship, and see if the men I wanted were on board. This he refused to do. I said I must try to execute my warrant, even if I had to use force. He said he would use force to resist me, and that if he was overcome, he would throw up his ship to the government here and go home and report the matter to his government. He said that he dare not allow me to search his ship; "it was more than his commission was worth; and that such a thing would not be attempted by the government to a ship of war of any other country." He said, "It was only by courtesy that I was allowed on board," and that he considered "a great slight had been put upon him by sending me to the ship with a warrant." He said he thought that his "word should have been taken in preference to that of men who had probably deserted from the ship, and had been put up to annoy him by the American consul." He said that if I took one man I might come afterward and take fifteen or twenty, and that the American consul would perhaps lay an information against him as being a "buccaneer or pirate." He said he thought that he had been "very badly treated here by the police refusing to assist him in arresting his deserters." Before leaving I asked him again if he refused to allow me to look for the man for whom I had a warrant in my hand. He replied yes, that he did refuse, and that he would fight his ship rather than allow it." I then left.

I am, &c.,
(Signed) THOMAS LYTTLETON,
Superintendent.

[1] Appendix, vol. i, p. 524.

This report was on the same 14th February laid by the governor before the executive council for consideration, as appears by the subjoined further extract from the minutes of the council:[1]

Extract from the minutes of the council.—Minute 65/10 of the proceedings on the 14th February, 1865.

The council are specially summoned to consider a report from Police Superintendent Lyttleton, to whom had been intrusted the warrant mentioned in yesterday's proceedings, for the arrest of a British subject known as "Charley," who was stated on oath to have illegally enlisted himself on board the confederate ship Shenandoah.

The report is read to the council.

[151] *His excellency then draws the attention of his advisers to the gravity of the present state of affairs as respects the confederate steamship Shenandoah, and points out that as the ordinary course of the law has been frustrated by William Waddell refusing to allow the execution of a warrant issued upon a sworn information, it becomes necessary to consider what steps should now be taken to enforce the maintenance of neutrality.

After full consideration of the instructions issued by Her Majesty's government for the observance of neutrality, and some discussion upon the question of the right of the government to enforce the execution of the warrant, the council advise his excellency to direct the honorable the commissioner of trade and customs to write to Lieutenant Waddell and request that officer to reconsider his expressed determination to resist by force the execution of the warrant; and further to inform him that, pending his reply, the permission which has been granted to him to repair and take in supplies has been suspended by the governor.

His excellency then issues a direction under his own hand that, upon the receipt of an instruction to that effect from the chief commissioner of police, none of Her Majesty's subjects in this colony are to render any aid or assistance to or perform any work in respect to the so-called confederate steamship Shenandoah or in launching the same.

His excellency further directs that the chief commissioner of police be instructed to send some police to Williamstown, to take care that the direction above mentioned is duly observed by Her Majesty's subjects, and that the officer in charge of this force be strictly enjoined to prevent any collision between the police and the officers and men of the Shenandoah, and that no obstruction in any manner whatever is to be offered to their movements.

In pursuance of the advice of the council the following letter was on the same 14th February, 1865, addressed to the commander of the Shenandoah by the governor's direction:[2]

CUSTOM-HOUSE, *Melbourne, February* 14, 1865.

SIR: I am directed by his excellency the governor to state that it has been reported to the government that you have refused to allow the execution on board the Shenandoah of a warrant issued upon the sworn information, according to law, alleging that a British subject is on board that vessel who has entered the service of the Confederate States in violation of the British statute known as the foreign-enlistment act; that it is not consistent with the British law to accept any contrary declaration of facts, whatever respect be due to the person from which it proceeds, as sufficient to justify the non-execution of such warrant; and that, moreover, it is conceived that this government has a right to expect that those who are receiving in our port the aid and assistance which they claim as a belligerent under the Queen's proclamation should not in any way oppose proceedings intended to enforce the maintenance of neutrality.

It will be apparent to you that the execution of the warrant is necessary, in order to enable the government to bring to justice those upon whose depositions the warrant was issued, if the statements in those depositions should prove false in fact.

In this view you are appealed to to reconsider your determination, and, pending further information from you, which you are requested to make with as little delay as possible, the permission granted to you to repair and take in supplies is suspended, and Her Majesty's subjects have been duly warned accordingly.

I have, &c.,
(Signed) JAS. G. FRANCIS.

J. J. WADDELL, Esq.,
Lieutenant Commanding Confederate States Steamer Shenandoah.

[1] Appendix, vol. i, p. 524.
[2] Ibid., p. 643.

To this letter the following reply was received:[1]

CONFEDERATE STATES STEAMER SHENANDOAH,
February 14, 1865.

SIR: I am in the receipt of your letter of this date, in which you inform me that you have been directed by his excellency the governor to state that it has been reported to the government that I have refused to allow the execution on board the Shenandoah of a warrant issued upon sworn information, according to law, alleging that a British subject is on board this vessel who has entered the service of the Confederate States in violation of the British statute known as the foreign-enlistment act, and that it is not consistent with the British law to accept any contrary relation of facts, whatever respect be due to the person from whom it proceeds, as sufficient to justify the non-execution of such warrant. I am then appealed to to reconsider my determination, and the letter concludes by informing me that, pending a further intimation from me, the permission granted to repair and take supplies is suspended.

I have to inform his excellency the governor that the execution of the warrant was not refused, as no such person as the one therein specified was on board. but permission to search the ship was refused. According to all the laws of nations, the deck of a vessel of war is considered to represent the majesty of the country whose flag she flies, and she is free from all executions, except for crimes actually committed on shore, when a demand must be made for the delivery of such person, and the execution of the warrant performed by the police of the ship. Our shipping-articles have been shown to the superintendent of police. All strangers have been sent out of the ship, and two commissioned officers were ordered to search if any such have been left on board. [152] They have reported to me that, "after making a thorough search, they can find no person on board except those who entered this port as part of the complement of men.

I therefore, as commander of the ship, representing my government in British waters, have to inform his excellency that there are no persons on board this ship except those whose names are on my shipping-articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port, nor have I in any way violated the neutrality of the port.

And I, in the name of the government of the Confederate States of America, hereby enter my solemn protest against any obstruction which may cause the detention of this ship in this port.

I have, &c.,
(Signed) JAS. J. WADDELL,
Lieutenant Commanding, Confederate States Navy.

Hon. JAS. G. FRANCIS,
Commissioner of Trade and Customs, Melbourne.

Late in the evening of the same day (14th February) four men, who had been on board the Shenandoah, were apprehended by the police under the circumstances stated in the subjoined report:

Superintendent Lyttleton to the chief commissioner of police, Melbourne.[2]

I have the honor to inform you that, acting on your instructions, I proceeded yesterday, at 4 p. m., to Williamstown, and took possession of the slip on which the confederate vessel Shenandoah is placed. I cleared the yard, and would not allow any workmen to go on board the ship. At about 10 o'clock p. m. four men left the Shenandoah in a boat, pulled by two watermen. They were followed by the water-police, who were unable to come up with them until they got to the railway-station. They were then requested to come back and see me. I questioned them, and they told me that they had been on board a few days unknown to the captain, and that as soon as he found they were on board he ordered them to go on shore. I have detained these men in custody, and have written to the American consul requesting him to forward some one who may be able to identify them. The tug-steamers came at 4 this morning to tow the Shenandoah off. I ordered them off, and requested Captain Ferguson not to supply the ship with a pilot. I am still in charge of the slip.

I have, &c.,
(Signed) J. LYTTLETON.

The four persons so apprehended were on the 16th February taken before a magistrate and charged with having violated the foreign-enlistment act by enlisting, or attempting to enlist, in the confederate service.

[1] Appendix, vol. i, p. 644. [2] Ibid., p. 527.

One was discharged, being an American; the three others—one of whom was identified as being the man known as James Davidson or Charley—were committed for trial.

On the 15th of February the lessee of the slip on which the Senandoah was being repaired wrote to the chief secretary of the colony stating that his manager had informed him that, should a gale of wind arise, he (the manager) would either be compelled to launch the ship or run a great risk of her sustaining serious damage in consequence of her unsafe position on the cradle.[1]

This communication was laid before the executive council, and the governor, by the advice of the council, determined that the order by which the permission to repair had been suspended should be revoked, and the vessel allowed to complete her necessary repairs, her commander being at the same time told that he was expected to use every dispatch in getting to sea by the time previously fixed.[2]

A communication to this effect was accordingly made to Commander Waddell, who, in acknowledging it, reiterated his previous denials in the following terms:[3]

> The four men alluded to in your communication are no part of this vessel's complement of men; they were detected on board by the ship's police after all strangers were reported out of the vessel, and they were ordered and seen out of the vessel by the ship's police immediately on their discovery, which was after my letter had been dispatched informing his excellency the governor that there were no such persons on board. These men were here without my knowledge, and I have no doubt can be properly called stowaways, and such they would have remained but for the vigilance of the ship's police, inasmuch as they were detected after the third search; but in no way can I be accused, in truth, of being cognizant of an evasion of the foreign-enlistment act.

The Shenandoah quitted Port Philip on the morning of the 18th February, 1865.

On the 18th February,[4] after the ship had sailed, the consul of the United States sent to the governor a declaration on oath pur-
[153] porting to be made by a man named Forbes. *The declaration was to the effect that about 4 p. m. on the 17th February Forbes had seen on the pier at Sandridge five men, (most, if not all, of whom were stated by him to be British subjects,) and that one of these told him that they and others were going on board a bark called the Maria Ross, then lying in the bay, and were to join the Shenandoah when she was out at sea, and that boats from the Maria Ross were to come for them at five o'clock. The consul stated that Forbes had come to his (the consul's) office with this intelligence at about 5 p. m., and had been taken by him immediately to the office of the Crown solicitor, with the view of laying an information, but that the Crown solicitor had refused to take the information, whereby an endeavor to prevent a violation of the neutrality of the port had been defeated. The consul inclosed also a statement by a Mr. Lord, who had accompanied him to the Crown solicitor. This statement, after giving an account of the interview, proceeded as follows:[5]

> We left and went first to the office of the chief commissioner of police, and not finding either him or Mr. Lyttleton in, we drove to the houses of Parliament, and on sending your name to the attorney-general he at once came out and asked us into the side room; he patiently listened to all you had to say, and then suggested that, if you would place the matter in the shape of an affidavit, he would lay it before his colleagues; that a verbal statement was not sufficient for the government to proceed upon. We then left and drove to the office of the detective police, and saw Mr. Nicholson, the chief, who heard the man's statement in full, but, as he could not act with-

[1] Appendix, vol. i, p. 528.
[2] Ibid., p. 526.
[3] Ibid., p. 646.
[4] Ibid., p. 616.
[5] Ibid., p. 618.

out a warrant, advised us to go to the police magistrate, Mr. Sturt, and get a warrant; then he would at once act upon it. Leaving there, we went to the residence of Mr. Sturt, in Spencer street, who received you very politely, listened to what you had to say, examined the man, but stated that he could not take the responsibility of granting a warrant on the evidence of this man alone, and advised your going to Williamstown to Mr. Call, who, perhaps, would be in possession of corroborative testimony through the water-police. We then left, it being about half past 7, and you, finding such a disinclination in any one to act in the matter, decided to take the deposition yourself and send it to the attorney-general, leaving it to the government to take such action on it as it might deem proper. Going to your consulate the deposition was taken, and a copy inclosed to the attorney-general, with a request for me to deliver it.

I took it to the houses of Parliament, which I found closed, and it being then late, about 9, I decided it was too late to stop the shipment of the men, as we understood the vessel was to leave at 5, and I went home and returned the letter to you on Saturday morning. Previous to going home, however, I again went to the detective office, saw Mr. Nicholson, told him how you had been prevented from getting the evidence before the government in the shape they required it. He expressed his regret, but could not act in so important a matter without a warrant.

The consul complained that the language and manner of the Crown solicitor, in refusing to take the information, had been insulting to him. The consul's letter was answered as follows:[1]

Mr. Warde to Mr. Blanchard.

FEBRUARY 21, 1865.

SIR: I am desired by his excellency the governor to acquaint you that he received your letter of the 18th instant in the afternoon of that day, Saturday, and that on Monday, the 20th, he caused it to be referred, through the honorable the attorney-general, to the Crown solicitor for any explanation he might wish to offer.

2. After stating that it was only in consequence of his accidentally returning to his office at half past 5 p. m., after it had been closed for the day, that the interview between you and himself occurred at all, Mr. Gurner states that he informed you that, not being a magistrate, he could not take an information, and adds that he was in a hurry to save a railway-train, and therefore left more suddenly than he otherwise should have done; but he positively asserts that neither in manner nor language did he insult you.

3. His excellency feels sure that the Crown solicitor's tone and manner have been misapprehended, and confidently assures you that there was no intention on the part of that officer to fail in the respect due to your position as the consul of the United States of America.

I have, &c.,
(Signed)

N. L. WARDE,
Private Secretary.

From circumstances which were discovered after the sailing of the Shenandoah, there was reason to believe that a number of men had gone secretly on board of that vessel during the night of the 17th February, and that they went to sea in her and became part of her crew.

The governor reported this fact to Her Majesty's government, and at the same time sent to the governors of the other Australian colonies, and to the governor of New Zealand, letters in the following terms:[2]

[154] **Governor Sir C. Darling to governors of Australian colonies and New Zealand.*

GOVERMENT HOUSE, *Melbourne, February* 27, 1865.

SIR: I consider it my duty to place your excellency in possession of the accompanying correspondence and other documents connected with the proceedings of the commander of the Confederate States vessel Shenandoah, while lying in Hobson's Bay, for the purpose of having necessary repairs effected and taking in supplies, under permission granted by me in accordance with the conditions prescribed by Her Majesty's proclamation and instructions for the observance of neutrality.

2. I have also the honor to forward copies of letters from the chief commissioner of police in Victoria, accompanied by reports and statements which leave no doubt that the neutrality has been flagrantly violated by the commander of the Shenandoah, who, after having assured me of his intention to respect it, and pleaded the privilege of a

[1] Appendix, vol. i, p. 618. [2] Ibid., p. 565.

belligerent ship of war to prevent the execution of warrants under the foreign-enlistment act, nevertheless received on board his vessel, before he left the port on the 18th instant, a considerable number of men destined to augment the ship's company.

3. I have thought it right to communicate to your excellency this information, in the event of Lieutenant Waddell or any of his officers hereafter claiming the privileges of a belligerent in any port of the colony under your government.

I have, &c.,
(Signed) C. H. DARLING.

The three persons who had been committed for trial on the charge of having taken service or agreed to enlist on board the Shenandoah were brought to trial on the 17th March, 1865, at the criminal sessions of the supreme court of the colony of Victoria. One was found guilty by the jury and another pleaded guilty, and these two were sentenced to ten days' imprisonment.[1]

The judge, in pronouncing sentence, took notice that the men had already been imprisoned for more than a month, and that persons in their condition of life might not and probably did not know the important results which might follow from such an unlawful act as they had committed. It was right and necessary, however, that the law should be vindicated. The third of the accused persons (a boy of about fifteen years of age) was discharged in consideration of his youth, on the application of the attorney-general.

It may be here mentioned that in March, 1864, six men had been brought to trial at Cork on a charge of having agreed to enlist on board the United States war-steamer Kearsarge. They pleaded guilty, and were discharged without punishment, on the ground that they were probably unacquainted with the law, and ignorant of the criminality of the act which they had committed. It was stated, and is believed by Her Majesty's government to be true, that they had come on board without the sanction or knowledge of the captain of the Kearsarge, who ordered them to be put ashore when he subsequently touched at Queenstown.

The governor of Victoria, in reporting to Her Majesty's government the circumstances which had occurred during the time that the Shenandoah remained within the waters of that colony, requested that he might be furnished with specific instructions as to the right of the colonial government to execute a warrant under the foreign-enlistment act on board a belligerent ship of war, whether belonging to a state with which Her Majesty had diplomatic relations, or to a community situate as the Confederate States were; and, if the right should be considered to exist, he requested to be informed to what extent the government would be justified in proceeding for the purpose of enforcing the execution of such a warrant. The governor's inquiry was referred to the law-officers of the Crown in England, and they advised as follows:[2]

The law-officers of the Crown to Earl Russell.

LINCOLN'S INN, *April* 21, 1865.

MY LORD: We are honored with your lordship's commands signified in Mr. Murray's letter of the 18th instant, stating that he was directed by your lordship to transmit to us a letter from the colonial office, inclosing copies of dispatches from Governor Sir C. Darling, together with their several inclosures, relative to the visit to the port of Melbourne of the Confederate States steamer Shenandoah, and the alleged enlistment of British subjects there to serve on board that vessel; and to request that we would take these papers into our consideration, and favor your lordship with any observations we might have to offer thereupon, and more particularly as to whether they seem to require any action on the part of Her Majesty's government.

In obedience to your lordship's commands we have taken these papers into our consideration, and have the honor to report.

[1] Appendix, vol. i, p. 577. [2] Ibid., p. 558.

That it appears to us that, in the circumstances stated, his excellency he [155] governor acted with *propriety and discretion; and there does not appear to us at present to be a necessity for any action on the part of Her Majesty's government.

With respect to his excellency's request, that he may receive instructions as to the propriety of executing any warrant under the foreign-enlistment act on board a confederate (public) ship of war, we are of opinion that, in a case of strong suspicion, he ought to request the permission of the commander of the ship to execute the warrant; and that, if this request be refused, he ought not to attempt to enforce the execution; but that, in this case, the commander should be desired to leave the port as speedily as possible, and should be informed that he will not be re-admitted into it.

We have, &c.,
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

While the Shenandoah was in Hobson's Bay the following report on her construction, equipment, and warlike force was made to the governor by a competent officer who had served as a lieutenant in Her Majesty's navy:[1]

Captain Payne to Colonel Henderson.

MELBOURNE, *February* 10, 1865.

SIR: With reference to your memorandum, marked confidential, directing me to report upon the armament, speed, and other qualities of the confederate war-steamer Shenandoah, I have the honor to inform you that I have taken every opportunity that presented itself for obtaining the information you desire, and beg now to report—

1st. That the armament (as far as I can see) consists of the following ordnance, viz: Two Whitworth rifle-guns of thirty-three hundred-weight each. Four 8-inch smooth-bore guns, fifty-five hundred-weight each. Two 12-pounder smooth-bore guns, about fifteen hundred-weight each.

I have been unable to ascertain what amount of ammunition she has on board for these guns, nor have I been able to determine where her magazines are placed. I do not think they are abaft her engine-room, for her after-hold has been cleared, and there is no appearance of any magazine there. I observe that there were no small-arms, stands for small-arms, cutlasses, or pistols, about any part of her decks; and, as far as I could see, there appears to be a general unreadiness for action about her quarters. Shot-racks were not fitted, nor did I see any place I call the shell-room aloft; everything indicated that she was nothing more than an ordinary merchant-ship.

I have used every exertion (but without success) to ascertain whether she has any larger guns stowed away below. I do not think she has, as her scantling would hardly allow her to carry more than I have already seen. There appears to be a mystery about her forehold, for the foreman of the patent-slip, when asked to go down to that spot to measure her for the cradle, was informed he could not get to the skin at that place. The hatches were always kept on, and the foreman states that he was informed they had all their "stuff" there.

As to her speed, I have been informed by competent judges that, taking her boiler power into consideration, she would not exceed an average of ten knots an hour under steam alone; while under sail she has every appearance of being very fast. There is nothing to protect her machines from shot and shell; in fact, her boilers and the principal parts of her machinery are above the water-line. Her bunkers certainly are between the machinery and the ship's side, but from their small dimensions, they would offer but small resistance to shot. The most vulnerable part, viz, the boilers, is left quite unprotected. She can carry a great quantity of coals, but in her bunkers she can only stow about 50 tons. Her daily consumption under full steam averages about 24 tons. She is fitted with a smoke-consuming apparatus, which appears to answer well, for I remarked when she first came up the bay but little smoke was emitted from her funnel. In her other qualities, I think she corresponds with the description given in Lloyd's Register of another vessel which has a similar number and the same tonnage marked on her main beam, viz, No. 4854 and 790 tons. She is built on the composite plan, having iron frames with wood planking, and appears to have been strongly built, but not more so than is usual for ships classed on the first letter for thirteen years.

The state of the vessel on deck, aloft, and in the engine-room, I think both slovenly and dirty, and does not reflect any credit upon her officers.

[1] Appendix, vol. i, p. 557.

There appeared to me to be about 40 to 50 men on board, slouchy, dirty, and undisciplined. I noticed also a great number of officers, and could not help remarking that the number appeared out of all proportion to the few men I saw on board. Without disparaging the confederate war-steamer Shenandoah, I am altogether of opinion that there is nothing in her build, armament, (with the exception of the Whitworth guns,) and equipment that should call for more special notice than that she is an ordinary merchant-vessel, armed with a few guns.

I have, &c.,
(Signed) CHARLES B. PAYNE.

The consul of the United States at Melbourne had, on the Shenandoah's first arrival in the port, sent to Mr. Adams, in a letter
[156] dated 26th January, 1865, the following *description of her, communicated to him (the consul) by persons who had been on board of her as prisoners:[1]

She has the appearance of an ordinary merchant-ship, with a long full poop, a large bright wheel-house, oval skylights on the poop. She has one telescope funnel. The mizzen topmast and top-gallant staysail, both hoist from the mainmast head. She is wire-rigged.

The officers declare it would not be safe to fire a broadside. It is the general impression that she is not a formidable vessel. She is leaky, and requires two hours' pumping out. The crew consists of seventy-nine, all told.

Her armament was stated by these persons to consist of "two unrifled 8-inch-shot guns, two rifled 4-inch guns, and two ordinary 12-pounders, the original ship's guns."

By several persons who had been on board of her as prisoners or among her crew, it was sworn that only the two ordinary 12-pounder guns were used during her cruise in making prizes. By this was meant (as appears from the depositions themselves) that these guns were used in firing blank shots, to compel merchant-vessels to heave to. They do not appear to have been used in any other manner.

With respect to her crew it was sworn by one of the prisoners that he had heard her captain say that he and his officers took charge of her at the Madeira Islands, and sailed thence with a crew of seventeen men. Another deponent (one Silvester, a seaman who had joined her from the Laurel and left her at Melbourne) stated on oath that, when she was left by the Laurel, her whole crew, including officers, numbered twenty-three persons. When she arrived at the port of Melbourne she had captured nine or more United States merchant-ships, and her crew was largely increased by the addition of men who had joined her from those ships. Several men who had so joined her, and who left her at Melbourne, affirmed that they had been forced to take service in her against their will by threats and ill-usage.

On the 20th June, 1865, Earl Russell received the following letter from Mr. Mason, who had been residing in England during the war as an agent of the government of the Confederate States, though not officially recognized as such by Her Majesty's government:

Mr. Mason to Earl Russell.[2]

28 GROVE STREET,
Leamington, June 20, 1865.

MY LORD: It being considered important and right, in the present condition of the Confederate States of America, to arrest further hostile proceedings at sea in the war against the United States, those having authority to do so in Europe desire as speedy as practicable to communicate with the Shenandoah, the only remaining confederate ship in commission, in order to terminate her cruise.

Having no means of doing this in the distant seas where that ship is presumed now to be, I venture to inquire of your lordship whether it will be agreeable to the govern-

[1] Appendix, vol. i, p. 589.

[2] Ibid., vol. i, p. 653.

ment of Her Majesty to allow this to be done through the British consuls at ports where the ship may be expected.

I have the honor to inclose herewith a copy of the order it is proposed to transmit, and will be obliged if your lordship will cause me to be informed whether, upon sending such orders unsealed to the foreign office, they can be sent through the proper channels to the consuls or other representatives of Her Majesty at the points indicated, to be by them transmitted, when opportunity admits, to the officer in command of the Shenandoah. These points are Nagasaki in Japan, Shanghai, and the Sandwich Islands.

I trust that your lordship will, from the exigency of the occasion, pardon the liberty I have ventured to take, and will oblige me by having the inclosed copy returned to me.

I have, &c.,
(Signed) J. M. MASON.

Inclosed in this letter was a paper signed "James D. Bullock," giving an account of the downfall of the confederate government and the cessation of the civil war, and purporting to direct the commander of the Shenandoah "to desist from any further destruction of United States property upon the high seas, and from all offensive operations against the citizens of that country."

Mr. Mason was told, in reply, that Earl Russell "has no objection to sending this letter to the places mentioned, and also to Her Majesty's colonial and naval authorities, it being always distinctly understood that the Shenandoah will be dealt with in the courts, if claimed, according to law.

Copies of the letter were sent accordingly to the commander-in-chief of Her Majesty's ships on the China and Pacific stations, and to Her Majesty's officers commanding on other naval stations, except the Mediterranean.

[157] *Reports having subsequently reached Her Majesty's government from Washington, that the Shenandoah continued to capture and destroy United States vessels after her commander had received information that the war was at an end, it was ordered that instructions should be sent to commanders of Her Majesty's ships of war and to governors of colonies that she should be seized, if found upon the high seas equipped for war; and if in a colonial port, should be forcibly detained. It was further ordered that, if so seized or detained, being equipped as a vessel of war, she should be delivered to the nearest authority of the United States, in a port or harbor of that country, or to an officer commanding a United States vessel of war on the high seas.[1]

It was afterwards positively affirmed by the commander of the Shenandoah that, although up to the 28th of June, 1865, he had continued to cruise and to make prizes, being then in the Arctic Sea and without news of what had occurred in America, he had, on receiving intelligence of the downfall of the government by which he was commissioned, "desisted instantly from further acts of war," and shaped his course for the Atlantic Ocean.

On the 6th November, 1865, the Shenandoah arrived at Liverpool.[2] She was immediately placed under detention by the officers of customs; and a party of men from Her Majesty's ship Donegal was put on board of her, to prevent her leaving the port. The gun-boat Goshawk was also moored alongside of her, with orders that she should not be allowed to hoist anchor, nor to light her fires, nor hoist out any property that might be considered as belonging to the Government of the United States. On the inspector-general of customs going aboard of the ship,

[1] Appendix, vol. i, p. 657. [2] Ibid., p. 662.

her commander stated that she had come into port with the intention of delivering her up to Her Majesty's government; and he, on the same day, wrote and sent to Her Majesty's secretary of state for foreign affairs a letter which concluded as follows:[1]

As to the ship's disposal, I do not consider that I have any right to destroy her, or any further right to command her. On the contrary, I think that as all the property of government has reverted, by the fortune of war, to the Government of the United States of America, that therefore this vessel, inasmuch as it was the property of the Confederate States, should accompany the other property already reverted. I therefore sought this port as a suitable one wherein to "learn the news," and, if I am without a government, to surrender the ship with her battery, small-arms, machinery, stores, tackle, and apparel complete to Her Majesty's government for such disposition as in its wisdom should be deemed proper.

Captain Waddell, in this letter, stated that the Shenandoah had been a ship of war under his command belonging to the Confederate States, and that he had commissioned her in October, 1864, under orders from the naval department of the Confederate States, and had cruised in her in pursuance of his orders.

Mr. Adams, on being informed of the arrival of the Shenandoah at Liverpool, wrote as follows to the Earl of Clarendon, then Her Majesty's secretary of state for foreign affairs:[2]

Mr. Adams to Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, November 7, 1865.

MY LORD: I have the honor to submit to your consideration the copy of a letter received by me from the vice-consul of the United States at Liverpool, touching the arrival yesterday of the vessel known as the Shenandoah at that port.

Although necessarily without special instructions respecting this case, I do not hesitate to assume the responsibility of respectfully requesting Her Majesty's government to take possession of the said vessel with a view to deliver it into the hands of my Government, in order that it may be properly secured against any renewal of the audacious and lawless proceedings which have hitherto distinguished its career.

I perceive by the terms of the vice-consul's letter that some of the chronometers saved from the vessels which have fallen a prey to this corsair are stated to be now on board. I pray your lordship that proper measures may be taken to secure them in such manner that they may be returned on claim of the owners to whom they justly belong.

Inasmuch as the ravages of this vessel appear to have been continued long after she ceased to have a belligerent character, even in the eyes of Her Majesty's government, it may become a question in what light the persons on board and engaged in them are to be viewed before the law. The fact that several of them are British subjects is quite certain. While I do not feel myself prepared at this moment, under imperfect information, to suggest the adoption of any course in regard to them, I trust I may venture to hope that Her Majesty's government will be induced, voluntarily, to adopt
[158] that which *may most satisfy my countrymen, who have been such severe sufferers, of its disposition to do everything in its power to mark its high sense of the flagrant nature of their offenses.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

This letter, with other communications relating to the Shenandoah and her officers and crew, having been referred to the law-officers of the Crown, they, on the same day, (7th November, 1865,) advised as follows:[3]

In obedience to your lordship's commands, we have taken these papers into our consideration, and have the honor to report—

That we think it will be proper for Her Majesty's government, in compliance with Mr. Adams's request, to deliver up to him, on behalf of the Government of the United States, the ship in question, with her tackle, apparel, &c., and all captured chronometers or other property capable of being identified as prize of war, which may be found on board her.

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[1] Appendix, vol. i, p. 667.
[2] Ibid., p. 669.
[3] Ibid., p. 670.

With respect to the officers and crew, we observe that Mr. Adams does not demand their surrender to the United States Government, and that the only question suggested by him is, whether they or any of them ought to be proceeded against, under the direction of Her Majesty's government, for some offense or offenses cognizable by British law. The only offense at which he distinctly points is that of violating the foreign-enlistment act, by taking part in hostilities on board of this ship; and, as to this, we think it would be proper, if some of these men are, as he says, British subjects, (by which we understand him to mean natural-born British subjects, for none others are within those provisions of the act which relate to enlistment or acts of war out of this country,) and if evidence can be obtained of that fact, to direct proceedings to be taken against those persons, under the second section of the foreign-enlistment act, 59 Geo. III, cap. 59, before they have become dispersed, so as to escape from justice. If the facts stated by Captain Waddell are true, there is clearly no case for any prosecution, on the ground of piracy, in the courts of this country; and we presume that Her Majesty's government are not in possession of any evidence which could be produced before any court or magistrate for the purpose of contravening the statement or of showing that the crime of piracy has, in fact, been committed.

We conceive that the substance of the foregoing observations may properly be embodied in the reply to be given to Mr. Adams, and we think it may not be amiss to add that, of course, Mr. Adams and his Government must be well aware that any proceeding in this country against persons in the situation of the crew of the Shenandoah (as against all others) must be founded upon some definite charge, of an offense cognizable by our laws and supported by proper legal evidence; and that Her Majesty's government are not at present in a position to say whether such a charge, supported by such evidence, can or cannot be brought against any of the persons in question.

With respect to any of the persons on board the Shenandoah who cannot be immediately proceeded against and detained, under legal warrant, upon any criminal charge, we are not aware of any ground on which they can properly be prevented from going on shore and disposing of themselves as they may think fit; and we cannot advise Her Majesty's government to assume or exercise the power of keeping them under any kind of restraint.

We have, &c.,
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

On a subsequent reference, upon the following day, they again stated their opinion as follows:[1]

With respect to the question whether the officers and crew of the Shenandoah may now be permitted to leave the ship, and to go on shore, we have only to repeat the opinion expressed in our report of yesterday's date, namely, that these persons being now in this country, and entitled to the benefit of our laws, cannot be detained except under legal warrant upon some criminal charge duly preferred against them in the ordinary course of law. If Her Majesty's government are now in possession, or consider it probable that, if an information were laid before a magistrate, they would shortly be in possession of evidence against any of these persons sufficient to justify their committal for trial, either upon any charge of misdemeanor under the foreign-enlistment act or upon the graver charge of piracy, we think it would be right and proper to take the necessary proceedings without delay, in order to have such charge duly investigated; but, at the present time, we are not informed of any such evidence in the possession or power of Her Majesty's government by which such a charge would be likely to be established.

We have, &c.,
(Signed) ROUNDELL PALMER.
R. P. COLIER.
ROBERT PHILLIMORE.

Instructions were thereupon sent to Captain Paynter, commanding Her Majesty's *ship Donegal, who was in charge of the Shenan-
[159] doah, that those of her offiers and men who were not ascertained to be British subjects, either by their own admission or by the evidence of persons who knew them, should be allowed to quit the vessel with their personal effects. As to those who should be ascertained to be British subjects, inquiry was to be made whether evidence on oath could be obtained against them. Those against whom evidence could be obtained were to be detained and taken before a magistrate, the rest discharged.[2]

[1] Appendix, vol. i, p. 673.
[2] Appendix, vol. i, p. 676.

Captain Paynter reported, on the 8th November, that on receiving these instructions he had gone on board the Shenandoah, and had ascertained that the crew were all shipped on the high seas. "I mustered the crew, and was fully satisfied that they were foreigners, and that there were none known to be British-born subjects on board; they were therefore all landed with their effects."[1]

Captain Paynter subsequently stated that his conclusion was formed partly on the assurances given him on board by the late commander and officers of the ship, and partly by the answers returned by the men when mustered and questioned, one by one, on their general appearance, and on the absence of any evidence against them. He added that any men who were British subjects, and had formed part of her original crew, might have found means to make their escape while she was in the Mersey:[2]

On this subject the following report was made by the lieutenant commanding the Goshawk:[3]

Lieutenant Cheek to Captain Paynter.

GOSHAWK, ROCK FERRY, *January* 26, 1866.

SIR: In compliance with your order calling on me to report the proceedings on board the Shenandoah during her detention at this port by the British authorities, I have the honor to inform you that agreeably to instructions, dated 6th November, 1865, I proceeded in Her Majesty's gun-boat Goshawk, under my command, and lashed her alongside the vessel.

In the evening Captain Waddell informed me that the vessel having been taken charge of by the custom-house authorities, he considered himself, the officers, and crew relieved from all further charge and responsibility of the ship, and that his authority over the crew would also end.

The following day (November 7) the crew requested that I would allow them to land, none of them having been on shore for more than nine months. I told them that under the circumstances it was not in my power to grant it, and persuaded them to remain quiet for a day or two, till orders could be received from London.

They then demanded to see my authority for detaining them. I explained that I acted under orders from you. They replied that you could have no charge of them without instructions from Earl Russell, the foreign office, or the American minister, as they were American subjects.

This evening, as on the previous one, I succeeded in pacifying the crew by reasoning with them.

On the following morning (8th November) the crew were getting riotous, and determined to remain on board no longer. Eight or ten had already deserted. I therefore in a letter to you explained the excited state the crew were in, and that I had heard from one or two of their officers their determination to leave the vessel that evening at all risks. I should, therefore, be compelled to let them escape, or else detain them by force.

The answer I received from you was, that I was to act up to your orders, and the crew were to remain on board, but that you hoped soon to have instructions from London.

I would call your attention to the excited state of the crew by their conduct in attempting to desert, many of them jumping on board the steamer and trying to conceal themselves when you came to muster and examine them, on which occasion I accompanied you into the cabin and heard you question Captain Waddell as to whether he believed any of his crew to be British subjects; he replied in the negative, and stated that he had shipped them all at sea.

On your questioning the officers they also made the same statement.

The first lieutenant mustered the crew from a book of his own, the only list found on board, and you stopped and questioned the men as they passed before you.

Each one stated that he belonged to one or other of the States of America.

The personal baggage of the officers and crew was examined by the custom-house officers to prevent any American property being taken on shore.

On the evening of the 9th November you again came on board the Shenandoah, and met the American consul in the cabin of a tug he had hired to bring him alongside; he then promised to send an officer to take charge of her, as a captured confederate cruiser, on behalf of the American Government.

On the 10th November, Captain Freeman came on board and took charge, under

[1] Appendix, vol. i, p. 678. [2] Ibid., p. 682.
[3] Ibid., p. 712.

orders from the American consul, and, in compliance with your memorandum, I handed the vessel and stores over to him.

On my leaving the Shenandoah, Captain Freeman hoisted the American ensign and pennant, and proclaimed her a man-of-war.

During the time I was on board I received no information, nor could I obtain [160] any evidence, that any of the crew were British subjects; had I done so I should have arrested them, and immediately communicated with you for further instructions.

I have, &c.,
(Signed) ALF. CHEEK.

In order to justify the detention of any of the crew it was, by law, necessary to prove by evidence that the persons detained were natural-born British subjects. To allege that they were probably such would not have been sufficient, nor could they have been called upon to prove that they were not such. No evidence tending to prove the British nationality of any of the Shenandoah's crew was furnished or offered to, or was in the possession of, Her Majesty's government or its officers before or at the time when the crew landed and dispersed. A deposition made by one Temple or Jones, a native of Madras, who stated that he had himself enlisted in the ship, and served in her throughout her cruise, was, on the 28th December—about seven weeks after the dispersion of the crew—sent to the Earl of Clarendon by Mr. Adams. It was clearly shown, however, that Temple was a person unworthy of credit, and some of the statements in his deposition were ascertained to be gross falsehoods. The crew of the Shenandoah, if Temple's evidence were to be believed, included Americans, Prussians, Spaniards, Portuguese, Danes, Malays, and Sandwich Islanders. About fifty men were stated by him to have joined her from United States ships.

On the 10th November, 1865, the Shenandoah was delivered to, and accepted by, the consul of the United States, and she soon afterward sailed for New York.

SUMMARY.

The Shenandoah was a steamship built, not for war, but for commercial purposes, and constructed with a view to employment in the China trade. She had been employed by her original owners in a trading voyage to New Zealand and China, and was, when she sailed from the port of London in October, 1864, registered in the name of a Liverpool merchant as sole owner.

She was not, within the jurisdiction of Her Britannic Majesty's government, fitted out, armed, or equipped for war, in any manner or degree, nor in any manner or degree specially adapted for warlike use. She appeared to be, and was in fact, by her construction, fittings, and in all other respects, at the time when she departed from the waters of the United Kingdom, an ordinary merchant-steamer, and not a ship of war. She had on board, at the time when she was owned and used as a trading-vessel, two 12-pounder carronades such as are usually carried by vessels of her class for making signals; and these guns passed with the rest of the ship's furniture, when she was sold by her original owners, and remained on board when she sailed in October, 1864. They were guns suitable for use in a merchant-vessel, and not for use in a ship of war. She cleared and sailed from the port of London as for an ordinary trading voyage, under her original name of the Sea King, by which she was known as a trading-vessel. In her stores, and in the coals which she carried as cargo, as well as in her build and equipment, there was, as Her Majesty's government believes, nothing that was calculated to

excite, or did excite, in the minds of persons on board of her, any suspicion that she was intended for a different purpose.

Her crew was composed of men who had shipped on board of her in the ordinary way, in the port of London, for a trading voyage. They were hired and signed articles for a voyage from London to Bombay, (calling at any ports or places on the passage,) and any other ports or places in India, China, or Japan, or the Pacific, Atlantic, or Indian Oceans, trading to and from, as legal freights might offer, until the return of the ship to a final port of discharge in the United Kingdom or continent of Europe; the voyage not to exceed two years.

Before or at the time of her arrival at the Madeira Islands, she was sold by her owner to the government of the Confederate States. Either on the high seas or in Portuguese waters she was transferred to an officer commissioned by the government of the Confederate States, who then took possession and control of her; and the master, officers, and crew who had come out in her from England (three or four men only excepted) left her at that time, and returned to England. The three or four men who remained on board the ship were one of the engineers, a common sailor, and one or two firemen. They are stated to have enlisted when under the influence of liquor.

[161] *The commander who had taken possession of the ship, and his officers, (who, like him, were Americans,) employed the strongest inducements in order to persuade the ship's crew to enlist, by the offer of large bounties, by the promise of high wages and prize-money, by exhibiting money to them, and by lavish supplies of liquor. These inducements, however, were used in vain, except in the case of the three or four men above mentioned.

The ship was also joined by a few men who had come in the steamer Laurel. At the time when she commenced cruising, her whole crew, exclusive of officers, was from seventeen to nineteen men. The number of men who would commonly be shipped to work a vessel of her size as a merchant-ship would be from forty to fifty, which was the number that actually went out in her. As a ship of war she would require a larger number than that. It appears that before she arrived at the port of Melbourne, her crew had been increased to a complement of from seventy to eighty men, exclusive of officers, (who were about twenty,) by the addition of men who joined her from captured American vessels.

The commander and officers of the Shenandoah (excepting, as some deponents stated, one of the lieutenants, who had taken a passage in her from London as an ordinary passenger, concealing his purpose and official character) came on board of her, for the first time, after she had arrived near to a detached group of islands belonging to the Madeiras, and called the Desertas. They came out as passengers in the Laurel steamer, which cleared on the 8th October, from Liverpool for a voyage to Matamoras *via* Havana and Nassau. They took the control of the ship, and, by their orders, her guns (other than the two small 12-pounders above mentioned) and all her ammunition were put on board of her from the Laurel. These acts were done either within Portuguese waters or on the high seas. The vessel afterward hoisted the confederate flag and commenced cruising. Her commander was a lieutenant-commander in the naval service of the Confederate States, appointed by the naval department of that government to command the Shenandoah.

Of the vessels captured by the Shenandoah a considerable number were captured before she arrived at a British colony.

The earliest intelligence respecting the Shenandoah which reached Her Majesty's government was received from Her Britannic Majesty's

consul at Teneriffe. Up to that time (that is, until the 12th November, 1864, five weeks after she left London) no representation respecting her had been made by Mr. Adams, and no information about her had been conveyed to or come into the possession of Her Majesty's government.

Immediately on the receipt of the British consul's report, and before any representation had been made or information furnished by the minister of the United States, Her Majesty's government took the opinion of its legal advisers on the question whether legal proceedings could be instituted against Corbett, the master of the ship, for his share in the transaction, and the master was, in fact, indicted and brought to trial, but was acquitted by the jury, the evidence as to his acts being doubtful and conflicting.

The commander of the Shenandoah on arriving in the port of Melbourne addressed to the governor an application in writing, stating that she was a steamer belonging to the Confederate States, and asking for permission to make necessary repairs and obtain necessary supplies of coal. Permission was granted to him to remain in the waters of the colony a sufficient time for receiving the provisions and things necessary for the subsistence of the ship's crew, and for effecting needful repairs. The commissioner of trade and customs for the colony was at the same time instructed to take every precaution in his power against the possibility that her commander might attempt to augment her armament in any degree, or to render the armament which she possessed more effective. The officers of the government were directed to attend to this, and to furnish daily reports of the progress made with the repairs and provisioning of the ship. Competent persons were appointed to ascertain whether repairs were really necessary and to report to the governor on the subject, and these persons reported that she was not in a fit state to go to sea, and that repairs were necessary, for which the vessel would have to be placed on a slip. The slip, though the property of the colonial government, was not under its control, but under that of a private person to whom it had been leased by the government.

Permission to land from the vessel stores which she did not require for use was asked, but refused by the governor, on the advice of his law-officers.

The commander of the ship was required to fix the earliest day on which she would be ready to sail, and to take his departure on the day so fixed; and she departed accordingly.

Three persons discovered to have gone on board the ship for the purpose of joining her crew were prosecuted and brought to trial. Two were punished; the third released without punishment by reason
[162] of his youth. A fourth was discharged, being found to *be an American. These were the only persons who could be ascertained, before she left Melbourne, to have joined or attempted to join her; and her commander gave his word in writing, as commander of the ship, that there were no persons on board of her except those whose names were on his shipping-articles; that no one had been enlisted in the service of the Confederate States since his arrival, and that he had in no way violated the neutrality of the port.

It was not the duty of the colonial government to seize or forcibly search the Shenandoah while in the waters of the colony, nor could it have done so without transgressing the rules of neutrality and the settled practice of nations.

No personal communication took place between the governor and the commander of the ship while she remained in the waters of the colony.

The discovery having afterwards been made that, notwithstanding

the vigilance exercised by the officers of the colonial government, persons had been secretly put on board the ship during the night preceding her departure, notice of this was sent by the governor to the governors of the other Australian colonies and of New Zealand.

Her Britannic Majesty having subsequently received reports, which appeared to be worthy of credit, to the effect that the Shenandoah was continuing to capture and destroy merchant-vessels after her commander had been informed of the cessation of the civil war, gave directions that she should be seized in any port of Her Majesty's colonial possessions, or on the high seas, and should be delivered over to officers of the United States. But the truth of these reports was positively denied by her commander on his arrival at Liverpool, and Her Majesty's Government has no reason to believe that the denial was untrue.

On arriving at Liverpool the vessel was secured by the officers of the government, and was handed over to the Government of the United States, on the express request of Mr. Adams.

The crew were detained on board for some days by the officers of the government. No evidence being within that time given, offered, or discovered against any of them, they were at the end of it suffered to land and disperse. More than six months had at this time elapsed since the end of the civil war.

The Shenandoah was at sea during more than twelve months, from the time at which her cruise began. She was never, so far as Her Majesty's government is aware, encountered or chased by a United States ship of war, and no endeavor to intercept or capture her appears to have been made by the Government of the United States.

Her Britannic Majesty's government denies that, in respect of the Shenandoah, there was on its part any failure of international duty for which reparation is due from Great Britain to the United States.

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*PART IX.

RECAPITULATION OF FACTS PREVIOUSLY STATED.

The statements of fact which have been placed before the arbitrators may be recapitulated as follows:

Part IX.—Recapitulation.

Of the four vessels in respect of which alone the United States have, up to this time, made claims against Great Britain, two—the Georgia and Shenandoah—were never, in any manner or degree, within the dominions of Her Majesty, fitted out, armed, or equipped for war, or specially adapted to warlike use. They were constructed and fitted in a manner suitable to merchant-ships. One of them, the Shenandoah, was not only built for a merchant-ship, but had been owned and used as such before she was purchased by the government of the Confederate States; and her condition and equipment when she departed from Great Britain, and when she came into the possession of the government of the Confederate States, were, so far as appears, the same in all material respects as they had been when she was owned and employed as a trading-vessel. This vessel, according to the evidence which has been brought to the knowledge of Her Majesty's government, was sold and transferred to the government of the Confederate States after she had departed from Her Majesty's dominions.

No information whatever respecting these two vessels respectively was conveyed to Her Britannic Majesty's government by the minister or consular officers of the United States, or came to the knowledge of that government, until they had respectively departed from Her Majesty's dominions. Her Britannic Majesty's government had no ground to believe or suspect that they or either of them were or was intended to be delivered to the government of the Confederate States or its officers, or employed in cruising or carrying on war against the United States. If the minister or consuls of the United States had any such grounds of belief or suspicion, they were not communicated to the government of Her Britannic Majesty.

The other two vessels, the Alabama and Florida, though suitable by their construction for vessels of war, were not armed for war when they respectively departed from the waters of the United Kingdom. They had then no armament whatever, and they did not receive any until after they had arrived at places very remote from Great Britain, and out of the control of Her Majesty's government.

As to one of these two, the Florida, no information supported by evidence proving, or tending to prove, that she was intended to cruise or carry on war against the United States, was conveyed to or received by Her Britannic Majesty's government previously to her departure from the United Kingdom. On her first arrival in a British colony this vessel was seized under the authority of the governor, but was released for want of proof, by the decree of a court of competent jurisdiction.

The Florida, before engaging in any operation of war, entered a port of the Confederate States. She remained there for more than four

months; she there enlisted and shipped a crew, and was put in suitable condition for cruising, and she was from thence sent out to cruise.

In the case of one vessel only, the Alabama, admissible evidence tending to prove the existence of an unlawful intention was furnished to Her Britannic Majesty's government before the departure of the ship. This evidence was supplied little by little, the last installment of it being delivered on the fourth day before her departure. She put to sea unregistered and without a clearance, under the pretense that she was about to make a trial trip and return to her moorings. The circumstances under which the evidence relating to this vessel was received, referred to the legal advisers of the government, and by them considered and reported on, are stated in Part VI of this case.

All the information furnished by Mr. Adams to Her Majesty's government, as well in relation to the Alabama as in relation to each of the three other vessels hereinbefore specified, was referred by the secretary of state for foreign affairs, with the utmost expedition, to the proper departments of the government, for inquiry, and in order that measures might be immediately taken, should occasion so require, for the due enforcement of the law. Inquiry was accordingly made in every
[164] case. In cases of the Georgia and *the Shenandoah, nothing could be done, since each of these vessels had already departed from Her Majesty's dominions. In that of the Florida no evidence of unlawful intention was or could be obtained while she was within the United Kingdom. In that of the Alabama, the persons having possession of the ship carried her to sea before the order for seizing her was given.

In estimating the reasonableness of the views acted upon by Her Majesty's government as to the sufficiency of the information and evidence from time to time submitted to them respecting apprehended infractions of the law by the construction and equipment of warlike vessels for the service of the Confederate States, it is necessary throughout to bear in mind not only that the trade of ship-building is a great and important branch of industry, which Her Majesty's government was not required by any international duty to place under restrictions unauthorized by law, and over which it was not justified in assuming any arbitrary control, but also that the principal firms of British shipbuilders had been for a long time in the habit of entering into contracts with foreign governments in all parts of the world for the construction, equipment, and sale of ships of war; such contracts being privately negotiated, in the ordinary course of business, without any power on the part of the government to inquire into or interfere with them. No presumption, therefore, as to the real destination of any such vessel would in any case arise from the mere fact of her having a warlike character, although she might be in course of building during a state of war between particular powers, while others were at peace.

In the papers relating to the iron-clad rams at Liverpool, ample illustration will be found of the difficulties which were liable to arise from this state of things whenever it became necessary to prove the actual purpose for which a ship of this character was being constructed, difficulties which, in the end, rendered it ultimately advisable for Her Majesty's government to pay a very large sum of money for the purchase of the rams rather than risk the uncertain result of a trial.

The four vessels above specified were procured from British ports, or purchased from British owners, by the persons comprising the *de facto* government of the Confederate States through their agents, and passed into the possession and control of that government. After possession

had been so acquired they were respectively armed for war, by the orders of that government, were commissioned as ships of war, and were commanded and officered by American citizens holding commissions in its naval service.

The crews of these vessels were enlisted on the high seas or elsewhere out of the jurisdiction of Her Majesty's government, and, in the case of the Florida, chiefly in a port of the Confederate States. They were composed partly of British subjects, whom the American officers induced by persuasion and by promises of reward to take service when at a distance from England. The solicitations of the American officers were sometimes successful in inducing British seamen to serve; sometimes they were exerted in vain. But the vessels were also manned to a considerable extent with Americans and others drawn from the crews of American ships captured by them; though it is right to add that in the case of some of the latter class who left the Shenandoah at Melbourne, it was alleged that threats and ill usage had been employed in order to induce them to join.

These vessels, after having been armed for war, were received as vessels of war in the ports of Great Britain as well as in those of the other neutral countries visited by them. In British ports they were received on the same footing as in those of other neutral nations, and were allowed to repair and purchase supplies on the same conditions as armed vessels of the United States, without favor or partiality, careful precautions being employed to prevent any renewal or augmentation of their warlike force within British waters.

No serious endeavors to intercept or capture any of these vessels, during the times of their respective cruises, appear to have been made by the Government of the United States; and the losses inflicted by them would probably have been in great measure averted had reasonable activity and diligence been exerted by that Government and its officers for that purpose.

The general course of Her Britannic Majesty's government throughout the war was governed by a strict regard for the obligations of neutrality and a sincere desire to fulfill them; and this is apparent as well from the facts which have been stated in relation to the four vessels above specified, as from the other facts stated in the earlier parts of this case.

Thus it has been seen—

That, besides the Florida and Alabama, many other ships were believed and asserted by Mr. Adams to be fitting out in British ports for the purpose of carrying on war against the United States, and were made the subject of representations to Her Majesty's government.

That in every case, without exception, the allegations of Mr.
[165] Adams were promptly *and carefully investigated; that in the greater number of cases Mr. Adams proved to be mistaken, the suspected ships being merely merchant-ships, built and fitted out with a view to a special employment, and not for war; that in all cases as to which reasonable evidence could be obtained the suspected vessels were seized and proceedings instituted for the condemnation of them; that four were thus seized—the Alexandra, the two iron-clads, and the Camden Pampero— and were prevented from being used for belligerent purposes; and one of them, the Alexandra, having been seized in England and restored by the verdict of a jury, was afterward seized again in a British colony.

That during the whole period of the war, which lasted for four years, no vessel armed for war was sent out or procured from British ports for

belligerent use; and that of vessels specially adapted by construction for warlike use, two only, the Florida and Alabama, were so procured in the manner and under the circumstances above described; while of these two one only, the Alabama, escaped and came into the possession of the confederate government without having undergone a seizure and trial.

Finally, it has been seen that the government of Her Britannic Majesty, not content with carefully performing, to the utmost of its power, its recognized international obligations, overstepped, on more than one occasion, the actual limit of those obligations, for the sake of preventing anything whatever which might compromise, or be reasonably thought to compromise, its neutrality; and, in particular, that, in order to prevent vessels which had been armed or built for war within Great Britain from passing into the hands of a belligerent, a large expenditure was twice voluntarily incurred, much of it without any equivalent, in addition to the costs and charges occasioned by unsuccessful proceedings in courts of law.

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*PART X.

REMARKS IN CONCLUSION.

Her Britannic Majesty's government has now stated, for the information of the arbitrators, the principal facts which it believes to be material to a just adjudication on the claims urged on the part of the United States. In so doing, Her Majesty's government has been under the unavoidable disadvantage of having to meet a case which has not yet been presented. When that shall have been done, and the claims of the United States shall have been clearly ascertained, Her Majesty's government will avail itself of the opportunity which it will have, under Article IV of the treaty, to submit to the tribunal such additional or more ample statement of facts as may then appear to be necessary. It forbears, also, until a comparison of the cases submitted on both sides shall have shown what points are really in dispute between the two governments, to enter into argument in support of its own position, and will, for the present, content itself with placing before the tribunal the considerations which follow.

PART X.—Concluding remarks.

That vessels should, under whatever circumstances, have been procured from British ports for warlike use, and employed as belligerent cruisers against the United States, Great Britain herself being neutral, has been a subject of displeasure and regret to Her Britannic Majesty's government. This regret is not removed by the facts, material as they undoubtedly are to a just appreciation of the question, that the vessels were obtained by means of artifice and concealment, which defeated the vigilance of the officers of the government; that all of them, when they respectively departed from Her Majesty's dominions were wholly unarmed, and some of them constructed as mere merchant-ships, without any special adaptation for war; that they were few in number; and that the persons who gained possession and control of them, and by whom they were used for war, were themselves, as the Government of the United States has never ceased to maintain, American citizens. Circumstances such as these must greatly affect, in the judgment of any impartial person, the question as to the responsibility of the neutral government. Yet it is nevertheless true that the acts themselves, being such as, if done or authorized by the neutral government, would have compromised its neutrality, had an inevitable tendency to disturb its relations with the belligerent against whom they were directed. Her Majesty's government, therefore, has not hesitated to express its regret, frankly and publicly, to the Government of the United States, and has permitted the expression of it to be placed on record in the treaty which has been concluded between the two powers.

But the Government of the United States insists that it is entitled to satisfaction in money for claims which it asserts have arisen out of acts of these vessels—that is, out of operations of war carried on, by means of them, by the persons in possession of them for the time being. It is

manifest that this contention is one which Her Britannic Majesty's government, although animated by the most friendly feelings toward the United States, could not, with due regard for its own rights and those of neutral nations in general, consent to acknowledge, not believing it to be just. It is a claim of strict right, and can be supported only by clearly establishing that an international duty, owed by Great Britain to the United States, has been violated by Great Britain, and by showing further that an appreciable injury has accrued directly from this cause to the United States, for which Great Britain ought, in justice, to make reparation in money. It is for the Government of the United States, then, to substantiate these positions, to specify clearly the international duty or duties on which it relies, and to prove the violation of which it complains.

A charge of injurious negligence on the part of a sovereign government, in the exercise of any of the powers of sovereignty, needs to be sustained on strong and solid grounds. Every sovereign government claims the right to be independent of external scrutiny or interference in its exercise of these powers; and the general assumption that they are exercised with good faith and reasonable care, and that laws are fairly and properly administered, (an assumption without which peace and friendly intercourse could not exist among nations,) ought to subsist until it has been displaced by proof to the contrary. It is not enough to suggest or prove that a government, in the exercise of a reasonable judgment on some question of fact or law, and using the means of information at its [167] *command, has formed and acted on an opinion from which another government dissents or can induce an arbitrator to dissent. Still less is it sufficient to show that a judgment pronounced by a court of competent jurisdiction, and acted upon by the executive, was tainted with error. An administrative act founded on error, or an erroneous judgment of a court, may, indeed, under some circumstances, found a claim to compensation on behalf of a person or government injured by the act or judgment. But a charge of negligence brought against a government cannot be supported on such grounds. Nor is it enough to suggest or prove some defect of judgment or penetration, or somewhat less than the utmost possible promptitude and celerity of action on the part of an officer of the government in the execution of his official duties. To found on this alone a claim to compensation, as for a breach of international duty, would be to exact, in international affairs, a perfection of administration which few governments or none attain in fact, or could reasonably hope to attain, in their domestic concerns; it would set up an impracticable, and therefore an unjust and fallacious standard, would give occasion to incessant and unreasonable complaints, and render the situation of neutrals intolerable. Nor, again, is a nation to be held responsible for a delay or omission occasioned by mere accident, and not by the want of reasonable foresight or care. Lastly, it is not sufficient to show that an act has been done which it was the duty of the government to endeavor to prevent. It is necessary to allege and to prove that there has been a failure to use for the prevention of an act which the government was bound to endeavor to prevent, such care as governments ordinarily employ in their domestic concerns, and may reasonably be expected to exert in matters of international interest and obligation. These considerations apply with especial force to nations which are in the enjoyment of free institutions, and in which the government is bound to obey, and cannot dispense with the laws.

If the tribunal should come to the conclusion that Great Britain has

incurred any liability to the United States, the question will then arise what should be deemed the just measure and extent of that liability. Her Britannic Majesty's government abstains at present from entering into that question, and will reserve such observations as may be fitly offered in relation to it on the part of Great Britain to a later stage of the proceedings. Here it is sufficient to remark that a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the ordinary operations of war, on the plea that those operations were assisted or facilitated by negligence on the part of the neutral government, is one which involves grave considerations and requires to be weighed with the utmost care. Losses of which such negligence is the direct and proximate cause, (and it is in respect of such only that compensation could justly be awarded,) are commonly not easy to separate from those springing from other causes. Success in warlike operations is generally due not only to the force possessed, but to the skill and courage exerted by the successful combatant. If claims of this nature were to be freely admitted, a belligerent might demand to be indemnified by the neutral against consequences fairly attributable, in part or altogether, not to the fault of the latter but to his own want of capacity and enterprise. Her Majesty's government has been compelled to point out that in respect of the vessels to which the foregoing statement relates there was, on the part of the Government of the United States or its officers, an extraordinary remissness in using the naval forces at their disposal, and that if ordinary activity had been exerted in the endeavor to intercept and capture these vessels, the losses of which the United States now complain would probably have been in great measure averted. It cannot be consistent with any reasonable view of international obligations that a belligerent state, alleging itself to be aggrieved by some imputed negligence of a neutral government, should on that account claim indemnity from the neutral for losses in the course of warlike operations which it has not actively and diligently exerted itself to prevent or arrest.

It was the constant aim of Her Britannic Majesty's government throughout the war to observe with fidelity and exactness the obligations, and to maintain unimpaired the rights, which the law and practice of nations have assigned to neutral powers. In upholding those rights all the nations of the world are interested; and it was the duty of Great Britain, as a maritime power of the first order, brought by circumstances into closer contact with the war than any other state, to resist on the one hand any encroachment on them, and to abstain on the other from any attempt to extend them beyond the just and expedient limits traced out by international law. Her Majesty's government has given the best proof of its sincerity in these respects, as well as its earnest desire to promote the pacific and amicable settlement of international differences, by proposing and agreeing to refer to the judgment of impartial arbitrators the question whether, in the matters complained of by the United States, it has failed to discharge any international duty. In deciding on the questions submitted to
[168] it, the tribunal will be called upon to apply to *them principles and considerations of wide application, not confined to maritime neutrality, nor to the acts and conduct of maritime nations alone. Great Britain is prepared to accept the award, whether favorable or unfavorable to her. She desires only that it shall be just. She claims only that it shall be founded on a true and equitable interpretation of the law of nations, and on principles which she herself and all other powers may be satisfied, whether as neutral or as belligerent, to acknowledge and abide by in time to come.

THE COUNTER CASE

OF

THE UNITED STATES

PRESENTED TO THE

TRIBUNAL OF ARBITRATION,

AT GENEVA,

UNDER THE PROVISIONS OF THE TREATY OF WASHINGTON, WITH AN APPENDIX CONTAINING ADDITIONAL DOCUMENTS, CORRESPONDENCE, AND EVIDENCE.

APRIL 15, 1871.

NOTE.

The figures in brackets in the text indicate the pages of the edition which was laid before the tribunal of arbitration at Geneva; the * indicates the word with which each page commences.

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THE COUNTER CASE OF THE UNITED STATES,

PRESENTED TO

THE TRIBUNAL OF ARBITRATION,

AT GENEVA,

UNDER THE PROVISIONS OF THE TREATY OF WASHINGTON, APRIL 15, 1872.

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*The IVth article of the treaty of Washington permits each party, within four months after the delivery of the case, to deliver [1] in duplicate to the arbitrators, and to the agent of the other party, a counter case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence presented by the other party.

Availing themselves of this right, the United States present this as their counter case, together with additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence submitted by Her Majesty's government.

In laying this counter case before the tribunal of arbitration, they deem it proper to premise that they do not consider it within the province of this paper to discuss all the propositions within the British case which they regard as justly disputable or requiring argumentative discussion. So far as the positions taken by Her Majesty's government in its case vary from those which the United States had the honor to lay before *the tribunal in their case, they respectfully refer [2] to that document for an expression of the views which they regard as supported by sound principles of reason and by the acquiescence of other powers, and by the writings of publicists of authority.

So far, too, as contestations of questions of fact are raised between the parties, on their respective cases, and the supporting evidence on either side, a mere renewal of the contestation in the counter case would be superfluous. The United States therefore refer to their original case for their views and estimates of the contested matters of fact.

It has seemed to them to be more in accordance with the spirit of the treaty, and with the convenience of the tribunal, thus to reserve for their counsel the general analysis and discussion of these matters, so far as they shall prove important in their bearing upon the substantial controversy between the parties in the argument which will be prepared by them for submission under the Vth article of the treaty, and in such oral arguments, if any, as the tribunal may express a wish to hear.

Reserving, therefore, their rights and the freedom of their counsel in these respects, they ask the attention of the tribunal to the following observations upon some of the main points of difference between the case and other matter submitted on the part of * Her [3] Majesty's government, and those submitted on the part of the United States.

I.

Certain errors of sense, which run through the case of Her Majesty's government, first claim attention.

1. It is assumed in that case that the rebels of the United States were, by Her Majesty's proclamation of May 3, 1861, invested with some undefined political attributes. But the United States have hitherto understood that Her Majesty's government merely assumed to regard the persons who resisted the power of the United States as a body of insurrectionists who might be recognized as clothed with belligerent rights at the discretion of neutral powers. They therefore think it right to conclude that the frequent use in the British Case of language implying recognized political attributes in the insurrection is an inadvertence.

2. Her Majesty's government assume that the reclamations of the United States are to be confined to claims growing out of the acts of the Florida, the Alabama, the Georgia, and the Shenandoah. The claims growing out of the acts of the other vessels named in the Amer-
[4] ican case are regarded by the *United States as also embraced within the terms of the Treaty. They form part of the claims generally known as the "Alabama claims." They are enumerated in the fourth of a series of five volumes printed by order of the Senate of the United States, which are part of the "documents, correspondence, and evidence" submitted with the case of the United States. These volumes, when thus collected and printed, were entitled: "Claims of the United States against Great Britain." It is believed that under that title they were in the library of the foreign office at London before Her Majesty's high commissioners received their instructions. It may also be said, without impropriety, that under the same title they were on the table of the joint high commission during the negotiations which preceded the conclusion of the treaty. The United States, therefore, while re-asserting their construction of the language of the treaty in this respect, feel that they have the right to ask the arbitrators to assume that Her Majesty's high commissioners had notice of, and acquiesced in, that construction.

3. The United States are at a loss to understand why several observations are introduced into the British Case which apparently aim to limit the operation of the three rules of the treaty. If, by the principles of construction which are suggested, Her Majesty's Govern-
[5] ment intend to ask for a modification *or change in those rules, the United States cannot too strongly protest against it.

4. It is averred in several places that some of the acts of which the United States complain were committed by American citizens. If these statements are introduced for the purpose of urging this fact as an excuse for the negligence of Her Majesty's officials, or for any other supposed relevant purpose, the United States will ask the tribunal to take note that the "American citizens" referred to were criminals in the eye of American law, at the time when they were elevated to the rank of recognized belligerents against the United States by the act of Her Majesty's government, an act in which the United States did not participate, and against which they have never ceased to protest. It would seem, therefore, to be impossible to impute to the United States any consequences of responsibility for the conduct of the persons thus described as "American citizens."

II.

Her Majesty's government has also stated, in terms, many propositions, some of law, some of fact, some of mixed law and fact.

For the convenience of the arbitrators the United States call attention to some of the leading points of difference between the two cases, with the reservations *heretofore made as to the points not noticed, and as to the rights of counsel. [6]

1. The British Case seems to concede that a belligerent who has wronged a neutral by violating its sovereignty and by forcing it to take part, indirectly, in a war, may, nevertheless, by some subsequent act, (such as commissioning without the jurisdiction of the neutral a vessel of war improperly constructed within its jurisdiction,) deprive the neutral of the right of taking cognizance of the original offense.

The United States suggest that such a right cannot be lost by the mere act of the offending belligerent.

2. It appears to claim for vessels of rebels recognized as belligerents an exemption from national jurisdiction, which should be accorded, if at all, only to vessels of recognized sovereign powers, to which powers political representations can be made in case of violations of neutral sovereignty; and it ignores undoubted prerogatives of the Crown to exclude armed vessels from the national ports.

3. It attempts to limit the operation of the words "due diligence" in a manner inconsistent with principles of law well established on the continent of Europe, in the United Kingdom, and in the United States. It sets up as the measure of care a standard which fluctuates with each succeeding government in the circuit of the globe, viz, "such care as governments *ordinarily employ in their domestic concerns." [7]

4. If the United States have correctly interpreted its somewhat vague language, on page 167, it asserts that, in a case like the present, a belligerent should be required to show on the part of a neutral, as a foundation for a claim for compensation, an absence of care nearly equivalent to willful negligence. The United States had notice that this point would be pressed by Her Majesty's government. It had announced that its case would be prepared partly under the direction of an eminent and learned publicist who had vigorously insisted upon it in his public writings on the neutrality of Great Britain in the American struggle. They therefore presented for the consideration of the arbitrators certain facts exhibiting an unfriendly feeling toward them on the part of individual members of Her Majesty's government during the contest, which might naturally lead to, and would account for, a want of diligence bordering upon willful negligence. But, while thus anticipating this position of Her Majesty's government's case, they did not, and do not, assent to its correctness. They do not conceive that the law of nations tolerates the proposition that belligerents are required to submit, without redress, to the injuries of neutral negligence, till it reaches the extremity suggested.

5. The British Case attempts to narrow the *international duties of a government to the exercise of the restraining powers conferred upon it by municipal law. [8]

6. It overlooks the obligation of the neutral to amend its municipal laws, when the powers conferred by such law prove inadequate for the performance of international duties. In this view the many statements in the British Case as to the actual internal distribution of powers in Her Majesty's government, though interesting, are irrelevant in measuring its external obligations.

7. The British Case proposes that the liability of Great Britain to make indemnity to the United States should be limited to the cases which the United States cannot show, by affirmative proof, that they actively and diligently exerted their naval power to prevent. The United States contend that such a proposed limitation has no just foundation in sound principles of international or other law.

III.

Part II of the British case assumes to give an introductory statement of, (1.) "The events which attended and followed the commencement of the civil war in America;" (2.) "The course pursued by Great Britain in relation to the war;" (3.) The course pursued by "the
[9] other maritime powers" in relation thereto. *Part III assumes to give a "statement on international rights and duties on the powers which were possessed by Her Britannic Majesty's government of preventing 'unlawful equipments,' and the manner and circumstances in and under which these powers were exercised during the war."

The United States, with the reservation heretofore made, now call attention only to some of the principal points of difference in this respect between the cases of the two governments.

1. The United States insists that Her Majesty's government is politically and historically in error in the assertion, on page 6, that the contest terminated in 1865 in the complete reconquest of the eleven Confederated States.

2. If it be intended by the statement in page 7, that "in and soon after the month of May, 1861, a number of armed ships were fitted out and sent to sea from ports in the Confederate States," to lead the arbitrators to suppose that there was any insurgent vessel preying on the commerce of the United States when the Florida or when the Alabama escaped from Liverpool, the United States cannot too strongly protest that Her Majesty's government is in error in this respect.

3. The United States have, in their case, called the attention of
[10] the tribunal to the acts of Belgium, *Portugal, Russia, and Prussia, which seem to have been overlooked by the authors of the British Case in their enumeration of the acts of the maritime powers. In regard to all the maritime powers the tribunal will doubtless observe that those which recognized the insurgents as lawful belligerents did so only after Great Britain, the principal maritime power, had elevated them under the name of the "Confederate States" to this rank, and had thus conferred upon them all the substantial advantages which they could gain from a general recognition by the maritime powers. They will also observe that the other governments did not recognize the title which the insurgents had taken for themselves. Thus, for example, the proclamation of the Emperor of the French spoke of them as "States which pretend to form a confederation;" the circulars of the Dutch government spoke of "the doubtful complications in the United States of North America," "the existing disturbances in the United States of America;" and the Brazilian circular expressly states that "the Confederate States have no legal existence."

4. It is stated, on page 22, that "by the United States cruisers the ports and waters of Her Majesty's dominions were resorted to for coaling and other purposes more frequently than by vessels of the Confederate States." If by this it is intended to imply that, having
[11] regard to the great disparity of numbers between the vessels *of the United States and those of the insurgents, the United States

enjoyed to an equal extent with the insurgents the hospitalities of the British ports, or that, without regard to that disparity, those hospitalities were extended with an impartial neutrality to each, the United States emphatically deny it.

5. It is stated, on page 25, that "the acts of which the Government of the United States is understood to complain belong to a class which have not commonly been made the object of prohibitory legislation;" that "in few countries, or in none, according to the information received by Her Britannic Majesty's government, did the law directly prohibit such acts, or make any definite provision for preventing them at the time when this war began, except in the United States and Great Britain." The information of the United States on this point does not agree with that of Her Majesty's Government. They have the honor to refer the tribunal to statements concerning the laws of Austria, Belgium, Denmark, France, Italy, the Netherlands, Portugal, Prussia, Spain, and Sweden and Norway, which will be found in the fourth appendix attached to the report of the neutrality laws commissioners. This document will be found at the close of the third volume of the British appendix, and in the fourth volume of the American evidence, between pages 126 and 168. They also refer to the documents and evidence herewith submitted *regarding the laws of several powers [12] in Europe and America for the preservation of their neutrality.

It will appear, from all this evidence, that acts such as those of which the United States complain have been widely made the subject of positive legislation, and that in no country, except Great Britain, so far as the United States are advised, has it been assumed that proceedings under the municipal or local laws are the measure of neutral obligations toward other governments.

6. On page 25 it is stated, with reference to the steps taken by President Washington, that "the measures adopted by the Executive of the United States to restrain these enterprises [the fitting out of French privateers] proved inadequate." In answer to this, the United States recall to the recollection of the tribunal that the French minister of that day contended that his government derived the right to commission privateers from the ports of the United States from the provisions of the treaty of 1778 between France and the United States—a treaty made at a time when Great Britain was at war with the United States. The repressive measures of President Washington were taken under a sense of the duties of the United States as a neutral under the laws of nations, and in the face of their particular duties under the treaty, as construed by France. In the memoir of Mr. Abbott, now Lord Tenterden,) which will be *found in the British appendix, at the [13] end of volume three, it is stated that "the result of the publication of the rules of the 4th of August [which were the measures adopted by the Executive referred to in the British case] was that the system of privateering was, generally speaking, suppressed, though cases seem to have occurred until the arrival of Mr. Genet's successor, in February, 1794, who disavowed his acts, and recalled the commission he had granted to privateers."

7. The remarks on pages 26, 27, and 28, regarding the manner in which the United States have at different times performed their duties as a neutral nation towards Spain, Portugal, and other powers, are stated to be made without any "intention of Her Majesty's government to cast any reproach upon the Government or people of the United States." They are, however, apparently introduced for the purpose of inducing the arbitrators to assume that the United States, at some or

all of those times, did fail to use the diligence for the repression of hostile expeditions from their shores which ought to have been exercised, and which is required by the rules of the treaty of Washington. The United States would regard such an imputation as a reproach, however intended by its authors. They have therefore determined to ask the arbitrators to examine the further evidence on these points which
[14] they have the honor to submit herewith, *although they cannot but recognize that the arbitrators may justly feel that neither party ought to add to their arduous labors by the introduction of statements and evidence wholly foreign to the issues submitted to their decision. The evidence now submitted by the United States regarding the performance of their international duties is voluminous and spreads over a series of years and a variety of incidents. It relates to the contest between Spain and her colonies, to the war between Brazil and the Artigas government, to struggles of Cubans for independence, to the war between Spain and the South American republics, and to the Crimean war. In all these contests it became the duty of the United States to preserve their neutrality under difficult circumstances; often when the sympathies of large masses of their people were enlisted in opposition to their national obligations. Her Majesty's government has thought it right to call in question the efficiency, while admitting the good faith with which the United States performed their duties in these trying circumstances. The evidence now submitted shows conclusively that Her Majesty's government has been misinformed; that the United States did perform their duties as a neutral at those times with a fidelity and activity which, had they been imitated by Great Britain during the insurrection, would have made the present proceedings unnecessary.

[15] *8. The United States unite with Her Majesty's government in its remarks on page 27, calling attention to the fact that the President of the United States, at the request of the Portuguese government, did, in 1817, recommend Congress to confer upon the government, not only power to punish offenders, but also power to prevent the commission of the offenses; and that Congress did, in compliance with such request, confer such power in the neutrality acts of 1817 and 1818.

9. The United States are at a loss to understand to what reference is intended by the words on page 28: "It is needless here to refer particularly to more recent instances of vessels fitted out in ports of the United States for expeditions against countries with which the United States were at peace. These instances are well known." Vague insinuations like these, without definite statement, allegation, or proof, furnish no foundation for an answer in the only form in which the treaty permits the United States to defend themselves.

10. The United States emphatically deny the statement on page 28, that their prohibitory laws have "been infringed by acts much more flagrant than any of those now charged against Great Britain." They feel confident that a fair consideration of the proof which they have
[16] offered and of that which *they now offer, showing the fidelity with which they have ever performed their international duties, will convince the arbitrators that they have honestly, strenuously, in good faith, and with due diligence, striven to perform those duties.

11. The United States think that Her Majesty's government has been incorrectly informed regarding the United States statute of 1818, commonly known as the neutrality act. It is stated on page 29 that the British act of 1819 is "more stringent, rigorous, and comprehensive than that of the United States." Her Majesty's government does not

say in what respect the superior stringency, rigor, and comprehensiveness of that act is supposed to consist. If the British act could have been suspended by the act of the Crown, which is supposed to have been the case, it may at least be held to have furnished less permanent and certain remedies than the law of the United States. The United States think that the qualities of stringency, rigor, and comprehensiveness will be found in their law in a superior degree; and they call attention to the following points of comparison: 1. Enlistments of British subjects only are made unlawful by the British act; the American act, on the contrary, makes all enlistments within the neutral jurisdiction unlawful, except naval enlistments of subjects of the enlisting
[17] belligerent, made on the deck of a vessel of the belligerent *while within the neutral waters. 2. By executive and judicial construction, the words "equip," "fit out," and "furnish" have received a much broader meaning in America than in Great Britain, as the United States have explained in their case. 3. The tenth and eleventh sections of the American act, commonly known as the bonding clauses, are admitted not to be in the British act. And it *is* also admitted that these clauses are intended to be preventive, not punitive. 4. The eighth section of the United States act is also omitted in the English act. This section, the practical operation of which is explained in the case of the United States, is regarded by them as by far the most efficient part of the act for the prevention of violations of neutrality. 5. It may not have escaped the attention of the arbitrators that Her Majesty's government has itself furnished evidence of the superiority of the United States statute over the British act. "I may remark," says Sir Frederick Bruce, the British minister at Washington, writing to his government, "that the Government of the United States has considerable advantages in proceeding againstv essels underthe statute. They have, on the spot where the preparations are being made, the district attorney, a legal officer responsible to the Government, to whom the duty of investigation is committed. The libel is in the nature of a proceeding in admiralty *in rem*. It is decided by a judge conversant
[18] *with international and maritime law, without the intervention of a jury." (Vol. 3, Brit. App., last paper, p. 67; vol. 4, Am. evidence, page 162.)

12. Without questioning, in the counter case, the correctness of propositions 1, 2, and 3 of English constitutional law, on page 30, the United States think that they are not mistaken when they say that the privilege which a witness is supposed to have of refusing to answer a question is a personal privilege, of which the witness may or may not avail himself. It is not supposed to be one which a court will voluntarily take for him, and enforce against his wishes.

13. In the statements on pages 31 and 32, regarding the supposed duties of the officials of the United States "to keep a watchful eye on whatever might tend to endanger the security or interests of the United State," &c., it is not made quite clear whether Her Majesty's government regard these as duties of which it had the right to demand performance of these officials, or as duties which they owed to their own government. Although the latter interpretation would seem to be the most reasonable one, there is some ground to suppose that Her Majesty's government has made the statement in the former sense. Without admitting it in that sense to be just, the United States insist that, even should such an obligation not be disputed, Her Majesty's gov-
[19] ernment would not thereby be relieved from *the duty of an independent, diligent, and vigilant watchfulness, in order to prevent

evil-disposed persons from violating its neutrality. Nor would the minister of a belligerent power (as Mr. Adams was in the eye of the English cabinet) be required, after the receipt of official information as to the nature and character of the evidence that must accompany his representations, to make, or complained of for not making, representations of fact to the neutral government, except in the manner in which he had been notified to make them. Thus, (to apply the proposition,) Mr. Adams, being notified by the British government that, in order to secure official action on a complaint of a contemplated violation of British neutrality by the insurgents, he must furnish proof of the fact sufficient to warrant conviction for a violation of the foreign-enlistment act, could not be charged by that government with responsibility for not making representations embodying a lesser degree of proof.

14. The United States do not understand that it is true that "allegations that vessels were being prepared for cruising or carrying on war," were in all cases followed by seizure of the vessels when sufficient *prima facie* evidence of the illegal purpose was furnished. They understand exactly the contrary to have been the case; that until the opinion of the law-officers of the Crown, given on the 29th day of July, 1862,
[20] (the day of the escape of the Alabama,) all branches of *Her Majesty's Government held that it was necessary, not only to establish a preparation for cruising or carrying on war, but also an actual arming of the offending cruiser in a British port, in order to justify seizure, and that this prevailing opinion was afterward sustained in effect by the courts of England in the Alexandra case, which is still the unreversed judicial construction of the act of 1819.

15. On page 57 is given what purports to be an explanation of the meaning of the words "registry" and "clearance," and of the duties of the officers empowered to register ships, and of the officers of the customs in respect to clearances. The acts of Parliament, prescribing the duties and conferring the powers, are not specially referred to; but the United States understand them to be "the merchant shipping act, 1854," (17 and 18 Vict., cap. 104,) and the "customs consolidation act, 1853," (16 and 17 Vict., cap. 107,) with their several amendments. These acts, in the opinion of the United States, confer more extended powers upon the officers of Her Majesty's government than is stated in the British Case, and they therefore ask the attention of the tribunal to the acts themselves, extracts from which are submitted herewith.

[21] *IV.

Part IV of the British Case assumes to state certain considerations proper to be kept in view by the arbitrators in reference to the cases of the Florida, Alabama, Georgia, and Shenandoah.

The United States have already made it clear, both in their case and in this paper, that they regard many of these statements as not "proper to be kept in view by the arbitrators" in reference to any of these vessels. Without repeating their views on this subject, they confine themselves to calling attention to a great error into which the arbitrators may be led in consequence of the use of inaccurate or careless language in the closing paragraph of this statement in the British Case.

It is there stated that "claims for the interference of Her Majesty's government in the case of these and other vessels were based, according to the statement of Mr. Adams, in his letter to Earl Russell dated 9th of October, 1862, on evidence considered by him to apply directly to infringements of the municipal law, and not to anything beyond it."

It is quite possible—perhaps it is not too much to say that it is probable—that the arbitrators may derive from this statement the impression that all the official representations of Mr. Adams in respect to these four vessels were expressly based on evidence offered by *him in support of allegations of infringements of the municipal law. The United States call attention to this, feeling confident that Her Majesty's government will be anxious to exclude a construction of its language which is so little in accordance with the facts. [22]

V.

Part V of the British Case is entitled, "Statement of facts relative to the Florida." The evidence in support of this part of the case is to be found in volume one of the appendix, between pages 1 and 165, inclusive.

There are few discrepancies in the two accounts of the career of this vessel. The new evidence furnished by Her Majesty's government sustains and confirms the views of the United States, and attention is called to some instances of this character.

1. It now appears clearly that, before the Florida left Liverpool, the British government received information from the government of His Majesty the King of Italy that the pretense that the Florida was constructed for the Italian government was a fraud.

2. The participation of the legal authorities at Nassau in the conspiracy for the discharge of the Florida, which was charged by the United States, is established by the official reports accompanying the British case.

3. Her Majesty's government introduces, on *pages 73–4 of its appendix, evidence which sustains the allegations in the American case that the Florida was, in outward appearance, a British man-of-war, and that, in such an assumed character, with the British flag flying, she passed the blockading squadron off Mobile, and that her real character was not suspected until too late to stop her. This act was described at the time by the distinguished admiral who witnessed it as only "an apparent want of vigilance." [23]

4. The official report of the governor of Barbadoes of what took place there in February, 1863, shows that there has been an evident mistake on the part of the governor as to the San Jacinto. It also brings home to the governor positive knowledge of the fact that the act which he was committing was a violation of international duty toward the United States.

5. It now appears in clear colors that Bermuda was made a base of hostile operations by the Florida. The commander of that vessel, having coaled, and having been at Barbadoes within less than seventy days, and having then cruised off the port of New York, destroying American vessels, arrived at Bermuda and informed the governor of all these facts. The governor, with a knowledge of them, gave him a hospitable reception, and permitted him to coal and repair. These facts were officially reported to Her Majesty's government, and were formally approved at the foreign office. *Until now, the United States have been unable to establish, without the help of presumptions, all the links in the chain of evidence. [24]

6. It is stated in the British Case that "had the vessel been seized by Her Majesty's government, a court of law would have ordered, and would, indeed, have been bound to order, the immediate restoration of her for want of evidence to support a forfeiture." It is not for the United States to challenge the statements of Her Majesty's government regard-

ing British municipal law. Their officials sought, during the rebellion, to induce Her Majesty's government to stop the vessels constructed in Great Britain to cruise against the United States. They did not ask for their forfeiture, they did not object to a restoration to their owners, provided they were not to leave British waters to carry on war against the United States. It is necessary to bring the tribunal back to this simple proposition, which has been obscured by the irrelevant consid-ations put forth by Her Majesty's government.

7. It is scarcely necessary to say that the United States deny the allegations regarding the supposed negligence of their Navy.

VI.

[25] The statements made regarding the Alabama * in the VIth part of the British case conflict but little with those made in the American case. In many respects they strengthen the American statement.

1. There is no discrepancy as to what took place in Liverpool prior to the escape of the vessel. Some new facts are introduced. For example: (*a*) That in reply to Mr. Adam's first representations, the law-officers of the Crown advised that he should be informed that Her Majesty's government was investigating the case, and that their course would depend upon the nature and the sufficiency of any evidence of a breach of the law which they might obtain; (*b*) that the official legal advisers of the customs gave opinions on the evidence contained in Mr. Adams's representations which were in conflict with the opinions of the law-officers of the Crown; (*c*) that these opinions were given upon the questions after they had been submitted to the law-officers of the Crown, and before the latter had rendered their opinions; (*d*) that the customs department of Her Majesty's government (to which Mr. Adams was referred by Earl Russell as charged with the management of the affair) acted on the opinions of their own advisers, at a time when they must have known that the law-officers of the Crown had the subject under consideration.

2. The opinion of the law-officers of the Crown, now first made public, confirms the views of the United States presented in their case.

[26] *3. It appears that the commissioners of customs knew on Tuesday, the 29th of July, that the Alabama had escaped that day, and that it was not until Friday, the 1st of August, that the collectors at Holyhead and Beaumaris received instructions to detain her. On the 2d of August the collector at Beaumaris reported that he had attended to his instructions, and had found that the Alabama had left Point Lynas on the morning of Thursday, the 31st. If, therefore, the instructions given on the 1st of August had been given on the 29th of July, the Alabama might have been detained at Point Lynas.

4. Her Majesty's government introduce a dispatch to Mr. Adams regarding his correspondence with Captain Craven, apparently with a purpose of assuming hereafter that Captain Craven was guilty of some negligence. It appears that Captain Craven was at Southampton with his vessel (the Tuscarora) on the 29th of July; that he left there for Queenstown, arriving at the latter place on the 30th; that, on the 31st, he received a telegram informing him that the Alabama was off Point Lynas; and that on the 1st of August he set sail up Saint George's Channel toward that point. Mr. Adams objected to the course he took, as bringing him within British waters. Facts, revealed subsequently to Mr. Adams's dispatch, show that the Alabama had left Point Lynas

before Captain Craven *knew that she had been there. Without [27]
regard, therefore, to principles which might well be disputed, this fact relieves the arbitrators from considering any supposed responsibility of the United States for the acts of the Tuscarora at that time.

5. The British consul's report of the visit of the Alabama to Martinique shows that she was in the habit of sailing under the British flag. This was known to Her Majesty's government on the 17th of December, 1862.

6. In January, 1863, the Alabama entered Port Royal, Jamaica, for repairs and to land prisoners. The course of the governor in allowing such hospitalities to be granted was approved by Earl Russell, February 14, 1863. This approval appears to have been given without regard to the advice of the law-officers of the Crown. (Appendix, page 212.)

7. Great stress is apparently laid on the reception and acts of the Alabama in Brazilian waters. The United States invite attention to the striking contrast between the course of Her Majesty's government in the acts complained of before the tribunal, and the course of the Emperor's government, as shown in inclosure No. 4, on page 276 of the appendix; as shown in the Brazilian circular on page 284, stating that "the Confederate States have no legal existence;" that they have been recognized as belligerents only "with the *necessary re- [28]
strictions," and that the exportation of warlike articles from the ports of the Emperor to the insurgents, whether under the Brazilian or a foreign flag, was forbidden; but that a similar trade to the ports of the United States was forbidden only to the Brazilian flag; as shown in the rule as to coal; and as shown in the carefully drawn distinction between hospitalities like those permitted in the British West Indian ports for the purpose of aiding a vessel in a hostile cruise, and hospitalities given to enable a vessel to reach a home port.

8. Her Majesty's government aver that the original crew of the Alabama was not enlisted for the service of the insurgents. The United States contend that the evidence shows that a large portion of the crew knew quite well whither they were going.

9. The United States contend that it is immaterial whether they did or did not make any efforts to capture the Alabama. The fact is, however, that they made great efforts, and incurred great expense for that purpose.

The United States also respectfully refer the tribunal of arbitration to the correspondence with the Portuguese government and authorities concerning this vessel, which is contained in the documents submitted with this counter case.

*VII. [29]

The evidence offered by Great Britain regarding the Georgia is in the main identical with that offered by the United States. In some respects the new documents strengthen the case of the United States.

1. It appears that Her Majesty's government was officially informed, by its own officials, of the suspicious character of the Alar, two days in advance of Mr. Adams's information, and that it took no steps in consequence.

2. It is intimated that Mr. Adams was in possession of information, before the sailing of the Georgia, which he should have communicated to Her Majesty's government, but it is conceded that the information would not have justified conviction under the foreign-enlistment act,

and that Mr. Adams had, before then, been informed that Her Majesty's government could not act on less complete representations.

3. It appears that orders were given to a British vessel of war to proceed to Alderney, but it does not appear whether those orders were or were not obeyed.

4. The report made in 1871 of the arming of the Georgia differs from the contemporaneous accounts made by eye-witnesses.

5. When Her Majesty's government made the statement that no serious endeavor to intercept or capture the Georgia appears to have
[30] been made on *the part of the United States, it was mistaken. This correction is, however, made under protest that the United States were under no obligation toward Great Britain to relieve her from the consequences of her original wrong-doing.

VIII.

As with the other vessels, so with the Shenandoah, the evidence in the two cases is largely the same, and the evidence exclusively presented by her Majesty's government strengthens the views and theories of the United States.

1. It appears in the opinion of the law-officers of the Crown, (pages 141, 142,) the Sea King was regarded as a British vessel until after its arrival at the Azores; that acts took place there on its deck which were esteemed to be violations of the foreign-enlistment act; and that the question whether her deck was not at that time a place belonging or subject to Her Majesty was thought to be a serious one. The acts which are referred to as having taken place there within British jurisdiction were some of the acts of which the United States now complain.

2. The United States do not admit that the persons who went out in the Laurel are to be regarded as ordinary passengers. They
[31] were persons who, *in violation of the duties of Great Britain as a neutral, were recruited in England to serve on the Shenandoah.

3. The official report of the governor of what took place at Melbourne confirms the account given by the United States in their case. By inclosure 19, on page 499, (appendix,) and by inclosure No. 22, on page 500, it appears that immediately after her arrival at Melbourne she was known as the Sea King. By paragraph 9, pages 505–6, it appears that the commander was not pressed to go to sea until he was quite ready to go; by paragraph 20, on page 507, it appears that the governor was consenting to the condonation of the offenses of the Shenandoah against British neutrality; by the police report, on page 523, it appears that the government was officially informed by its own officers that the commander intended to ship forty men at Melbourne; and by inclosure 90, page 529, it appears that, although the stay of the Shenandoah at Melbourne was nominally for the repair of the screw and its bearings, that part of the machinery was not touched until the vessel had been fourteen days in port. The United States cannot admit that there was any vigilance exercised by the officers of the colonial government.

4. The United States, for reasons stated in their case, cannot agree with Her Majesty's government in the statements made in the
[32] first paragraph of page *160 of the British case, regarding the crew of the Shenandoah and Temple's affidavit; nor can they accept as true the statement of the commander of the Shenandoah, cited by Her Majesty's government on page 167, that on receiving intelli-

gence of the overthrow of the insurrection, he "desisted instantly from further acts of war."

5. The United States, as to the Shenandoah, make the same statement which they have already made in reply to the statements of Her Majesty's government touching attempts to intercept or to capture the Georgia.

IX.

On page 167 of the case of Her Majesty's government, it is said: "If the tribunal should come to the conclusion that Great Britain has incurred any liability to the United States, the question will then arise what should be deemed the just measure and extent of that liability. Her Britannic Majesty's government abstain at present from entering into that question, and will reserve such observations as may be fitly offered in relation to it to a later stage of the proceedings. Here it is sufficient to remark that a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the *ordinary operations of war, on the plea that those [33] operations were assisted or facilitated by negligence on the part of the neutral government, is one which involves grave considerations, and requires to be weighed with the utmost care. Losses of which such negligence is the direct and proximate cause, (and it is in respect of such only that compensation could justly be awarded,) are commonly not easy to separate from those springing from other causes."

The United States concur with Her Majesty's government in the opinion that "a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the ordinary operations of war" "is one which involves grave considerations, and requires to be weighed with the utmost care." Without the explanatory observations which Her Majesty's Government reserves the right to make in a later stage of the proceedings, they cannot say how far they do or do not concur in the further statement that compensation can only justly be awarded by the tribunal in respect to losses of which the negligence of the neutral is the direct and proximate cause. *a*

*It appears to them, however, that certain general considera- [34] tions may reasonably be assumed by the arbitrators. 1. Both parties contemplate that the United States will endeavor to establish in these proceedings some tangible connection of cause and effect between the injuries for which they ask compensation and the "acts committed by the several vessels," which the treaty contemplates are to be shown to be the fount of those injuries. 2. The tribunal of arbitration being a judicial body, invested by the parties with the functions necessary for determining the issues between them, and being now seized of the substance of the matters in dispute, will hold itself bound by such reasonable and established rules of law regarding the relations of cause and effect as it may assume that the parties had in view *when they entered into their engagement to make this refer- [35] ence. 3. Neither party contemplates that the tribunal will

a On the 469th page of the American official case, in the English language, after enumerating the several classes of claims for injuries, the United States say: "*So far as these various losses and expenditures grew out of the acts committed by the several cruisers*, the United States are entitled to ask compensation and remuneration before this tribunal." In the unofficial French translation, made for the convenience of the arbitrators, there is no equivalent for the important words in italics above cited, (*French version, page* 377.) The agent of the United States received the book just as the conferences at Geneva in December were about to begin, and did not discover the error in time to correct it at that conference. He now takes the first opportunity to call attention to it.

establish or be governed by rules in this respect which will either on the one hand tend to release neutrals from their duty to observe a strict neutrality, or, on the other hand, will make a course of honest neutrality unduly burdensome.

Leaving now the issues raised by the cases and counter cases of the two governments to the arguments of counsel and to the decision of the tribunal, the United States repeat with a strengthened conviction the language with which they closed their case: "It is in the highest interest of the two great powers which appear at this bar that the causes of difference which have arisen between them should be speedily and forever set at rest. The United States entertain a confident expectation that Her Majesty's government will concur with them in this opinion."

ADDITIONAL

DOCUMENTS, CORRESPONDENCE,

AND EVIDENCE

ACCOMPANYING COUNTER CASE OF THE UNITED STATES.

[1] *CORRESPONDENCE.

Mr. Monroe, Secretary of State, to Mr. Steele, collector.

DEPARTMENT OF STATE,
July 18, 1811.

SIR: There is some reason to apprehend that the owners of the French privateer, the Diligence, are taking steps for the arming and equipping her for sea. As it is improper that French vessels should be armed within the United States, I have to request that you will be particularly attentive to this vessel, to prevent such a measure being carried into effect.

I have, &c.,

JAMES MONROE.

JOHN STEELE, Esq., &c., *Philadelphia.*

[2] *Mr. Monroe, Secretary of State, to the collector of Charleston.*

DEPARTMENT OF STATE,
September 19, 1811.

SIR: Having been recently informed that a British ship, a prize to the French privateer Duke of Dantzig, Arregnandier, commander, has been for some months past lying in the port of Charleston, I request you to state to me, with as little delay as possible, and with accuracy, the particular circumstances connected with the arrival and detention of this British vessel in the waters of the United States.

You will also be pleased to inform me whether there have occurred within your district any cases of vessels apparently fitted out as merchant ships, which have, on quitting the American shores, commenced acting as privateers, under French commissions, against the British trade.

I am, &c.,

JAMES MONROE.

The COLLECTOR *of the Port of Charleston.*

Mr. Monroe, Secretary of State, to Mr. Dallas, district attorney.

DEPARTMENT OF STATE,
November 4, 1811.

SIR: I have had the honor of receiving your letter of the 20th ultimo, including a decision of the circuit court for the district of Pennsylvania, in the case of the French public vessel Exchange, by which the decision of the district court is reversed.

As this case is a very important one, it is proper that it should be carried before the highest judicial tribunal of the United States. The

President requests, therefore, that you will take the steps necessary for that purpose.

Your own judgment and knowledge will suggest those which may be taken with the least compromitment of the Government.

I have, &c.,

JAMES MONROE.

[3] *ALEXANDER J. DALLAS, Esq., *Philadelphia.*

Mr. Monroe, Secretary of State, to Governor Claiborne.

DEPARTMENT OF STATE,
December 5, 1811.

SIR: I have the honor to transmit to you a copy of a letter from Mr. Onis, from which it would appear that he had received information *that some Frenchmen at New Orleans had it in view to arm and equip at that place a vessel, for the purpose "of surprising the port of Baracoa, in the island of Cuba, plundering its inhabitants, and laying waste the town."

[4]

Such an equipment in the port of New Orleans would be highly improper, and the President does not doubt that you will take effectual measures to prevent it, if, on inquiry, you find there is any foundation for the report which has reached Mr. Onis.

I am, sir, &c.,

JAMES MONROE.

Governor CLAIBORNE.

Mr. Monroe, Secretary of State, to the governor of Tennessee.

DEPARTMENT OF STATE,
September 3, 1812.

SIR: Intelligence has been received that some of the citizens of your State are collecting in the county of Giles, with the intention to make an incursion into some of the provinces of Spain, to join the revolutionary party in a contest against the existing government. As the United States are at peace with Spain, and such a movement is prohibited by law under severe penalties, the President has instructed me to communicate to your excellency this intelligence, *with a request that you would investigate its truth, and, should it appear to be well founded, give it all discountenance in your power. It is presumed that when the parties concerned in this proceeding are apprised of the sense of their Government, and, more especially, of the legal prohibition and penalties attached to it, they will not hesitate to decline it.

[5]

JAMES MONROE.

The GOVERNOR OF TENNESSEE.

Mr. Monroe, Secretary of State, to Governor Howard.

DEPARTMENT OF STATE,
September 3, 1812.

SIR: Your letter of the 21st of June, with a paper addressed to you by J. McClanaham, for himself and in behalf of Reuben Smith and

James Patterson, inhabitants of Louisiana, was received here while I was absent on a visit to Virginia, or it would have been sooner attended to.

It appears by this communication that its authors intend to visit some of the provinces of Spain, and, as may be inferred from the recital it gives of the circumstances attending a former journey there, and the motives assigned for the purposed one, their object may be, and [6] probably is, of an unfriendly nature. It is in the *latter view that the subject is interesting, and on which in that view I have to communicate to you the sentiments of the President.

The United States are at peace with Spain. The convulsions of the Spanish monarchy have produced no effect on this policy toward her. The disorganized condition of that power and its embarrassments have afforded motives rather to forbear to press claims of right founded on positive wrongs, than to seek redress by force, which under other circumstances might have been done.

If the projected visit contemplates any measure of hostility to Spain, it is repugnant to the policy of the United States, and is also positively prohibited by law. I have, therefore, to request that you will make this known to the parties concerned, and give all the discountenance in your power to any measure which may possibly tend eventually to assume a hostile character.

JAMES MONROE.

GOVERNOR HOWARD.

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[7] **Mr. Monroe, Secretary of State, to the governors of Louisiana and of the Mississippi Territory, and to Tully Robinson, esq.*

DEPARTMENT OF STATE,
February 14, 1814.

SIRS: It is understood that Dr. John Robinson, who was employed some time past, on the recommendation of the late General Pike, in making a friendly communication to the governor of the internal provinces of New Spain, is now engaged, with others, in raising troops to make a hostile incursion into those provinces.

These acts of Dr. Robinson, illegal in themselves, are the more reprehensible from the consideration that, as he was some time since in the service of this Government, it may be inferred that he is so still, and that these measures are taken under its sanction. I therefore hasten to inform you that he has at this time no employment whatever under the Government, nor has he had since his return last year from the internal provinces of New Spain; and that the measures imputed to him are repugnant to the views of the Government, and contrary to law. While at peace with Spain, whatever may be the injuries heretofore received from her government, it is highly improper for any of the citizens of the United States to violate that relation. The President, therefore, expects that you will take the necessary and proper steps to prevent any measures of the kind imputed to Dr. Robinson from being carried into effect.

JAMES MONROE.

[8] *Mr. Monroe, Secretary of State, to Dr. Robinson.*

DEPARTMENT OF STATE,
February 14, 1814.

SIR: I have just received a letter from you, bearing date the 25th of January, but without any designation of the place at which it was written. From other sources I learn that you are at Natchez. This will, therefore, be addressed to you there. The measures in which you are engaged, being contrary to law and wholly unauthorized, have excited no little surprise, especially as you knew this to be the case from your instructions while acting under the authority of the Government, on the recommendation of the late General Pike. Your conduct is the more reprehensible from the circumstance that, as you were employed some time past in making a friendly communication to the governor of the internal provinces of New Spain, it may be inferred that you are still in the service of the Government, and acting in conformity to its views and by its authority. On hearing of your proceedings at Fort Pitt, I instructed the attorney of the United States for the district of Pennsylvania to take the proper measures, in compliance with the law, to put a stop to them; and I now write to inform you, that if you do not immediately desist from your illegal measures and pursuits, the most decisive steps will be taken to give effect to the legal restraint applicable to them.

JAMES MONROE.

DR. ROBINSON.

[9] *Mr. Monroe, Secretary of State, to Governor Claiborne.*

DEPARTMENT OF STATE,
February 17, 1814.

SIR: I duly received the letter which you wrote to me on the 29th of November, 1813, giving information that General Toledo, late commander of the revolutionists in the Spanish province of Texas, and General Humbert, a Frenchman, were organizing and equipping a force in Louisiana and elsewhere within the United States, for the express purpose of entering that province and aiding in the overthrow of its government; and I observe with pleasure that you were taking measures to defeat their project. There is reason to believe that these foreigners act in concert and are engaged with Dr. Robinson, and it is my wish that the instructions in relation to him, communicated in my letter to you of the 14th instant, may be extended to them.

JAMES MONROE.

Mr. Monroe, Secretary of State, to Mr. Robinson.

DEPARTMENT OF STATE,
February 17, 1814.

SIR: There is reason to believe that General Toledo, late commander of the revolutionists in the Spanish province of Texas, and General
[10] Humbert, a Frenchman, *act in concert and are engaged with Doctor Robinson. It is my wish, therefore, that the instructions in relation to him, communicated in my letter to you of the 14th instant, may be extended to them.

JAMES MONROE.

TULLY ROBINSON, Esq.

Mr. Monroe, Secretary of State, to Mr. Conner.

DEPARTMENT OF STATE,
April 19, 1814.

SIR: The papers referred to in your letter of the 7th instant were duly received at this office. The United States being at peace with Spain, no countenance can be given by their Government to the proceedings of the revolutionary party in East Florida, if it is composed of Spanish subjects, and still less can it be given to them if it consists of American citizens, who, so far as their conduct may fall within the scope of existing laws long enacted and well known and understood, will be liable to censure.

JAMES MONROE.

WILSON CONNER, Esq.,
Louisburgh, North Carolina.

[11] **Circular to district attorneys.*

DEPARTMENT OF STATE,
September 1, 1815.

SIR: Information having reached this Department that sundry persons, citizens and others, within the limits of the State of Louisiana, are engaged in preparing the means of a military expedition against the dominions of Spain, I have to request, in the name of the President, that you will keep your official attention awake to the subject. Such conduct, violating alike the duties of neutrality and an express statute of Congress, merits the severest reprehension, and you will be pleased not to fail to prosecute, with due vigilance and to the full extent of the law, all persons implicated, against whom there appears, or can be obtained, any sufficient evidence of guilt.

I have the honor to be, &c.,

JAMES MONROE.

JOHN DICK, Esq.,
District Attorney of the United States for Louisiana.

(Similar letters to the above were written to the district attorneys of East and West Tennessee and Kentucky.)

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[12] **By the President of the United States of America.*

A PROCLAMATION.

Whereas information has been received that sundry persons, citizens of the United States, or residents within the same, and especially within the State of Louisiana, are conspiring together to begin and set on foot, provide, and prepare the means for a military expedition or enterprise against the dominions of Spain, with which the United States are happily at peace; that, for this purpose, they are collecting arms, military stores, provisions, vessels, and other means, and deceiving and seducing honest and well-meaning citizens to engage in their unlawful enterprises; or organizing, officering, and arming themselves for the same, contrary to the laws in such cases made and provided: I have therefore thought fit to issue this my proclamation, warning and enjoining all

faithful citizens, who have been led, without due knowledge or consideration, to participate in the said unlawful enterprises, to withdraw from the same without delay; and commanding all persons whatsoever engaged or concerned in the same to cease all further proceedings therein, as they will answer the contrary at their peril. And I hereby enjoin and require all officers, civil and military, of the United States, or
[13] of any of the States or Territories, *all judges, justices, and other officers of the peace, all military officers of the Army or Navy of the United States, and officers of the militia, to be vigilant, each within his respective department, and according to his functions, in searching out and bringing to punishment all persons engaged or concerned in such enterprises; in seizing and detaining, subject to the disposition of the law, all arms, military stores, vessels, or other means provided or providing for the same; and, in general, in preventing the carrying on such expedition or enterprise by all the lawful means within their power; and I require all good and faithful citizens and others, within the United States, to be aiding and assisting herein; and especially in the discovery, apprehension, and bringing to justice of all such offenders, in preventing the execution of their unlawful combinations or designs, and in giving information against them to the proper authorities.

In testimony whereof I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Washington, the 1st day of September, in the year of our Lord 1815, and of the Independence of the said United States of America the fortieth.

JAMES MADISON.

By the President:
JAMES MONROE, *Secretary of State.*

[14] ** Circular to the governors of Tennessee, Louisiana, Mississippi, and Missouri Territories.*

DEPARTMENT OF STATE,
September 9, 1815.

SIR: In the absence of the Secretary of State from the seat of Government, I am charged to transmit to your excellency, as I have the honor of doing, the inclosed copy of a proclamation of the President, referring to certain unlawful preparations which are said to be on foot within the United States, particularly in the State of Louisiana, toward an enterprise against the Spanish dominions, warning the citizens of the United States and other inhabitants thereof against participation in them, and calling upon all faithful citizens and the several authorities of the country for their aid in the suppression of these preparations and designs.

DANIEL BRENT.

Circular to the district attorneys of Kentucky, Tennessee, Louisiana, Mississippi, and Missouri Territories.

DEPARTMENT OF STATE,
September 13, 1815.

SIR: In the absence of the Secretary of State from the seat of Government, I am charged to transmit to you, as I have the honor of doing, the inclosed copy of a proclamation of the President of the United

States in relation to a projected enterprise against the dominions of His Catholic Majesty, with a view of particularly calling your attention to the subject of it, and of inviting your official aid, as far as it may be necessary, on the occasion.

DANIEL BRENT.

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[15] **Mr. Dick, district attorney, to Mr. Monroe, Secretary of State.*

NEW ORLEANS, *March* 1, 1816.

SIR: Attempts to violate the laws by fitting out and arming, and by augmenting the force of vessels, have no doubt been frequent; but certainly in no instance successful, except where conducted under circumstances of concealment that eluded discovery and almost suspicion, or where carried on at some remote part of the coast beyond the reach of detection or discovery. In every instance where it was known that these illegal acts were attempting, or where it was afterward discovered that they had been committed, the persons engaged, as far as they were known, have been prosecuted, while the vessels fitted out, or attempted to be fitted out, have been seized and libeled under the act of the 5th of June, 1794; and when captures have been made by vessels thus fitted out and armed, or in which their force was augmented or increased within our waters, where the property taken was brought within our jurisdiction, or even found upon the high seas by our cruisers and brought in, it has been restored to the original Spanish owners, and in some instances damages awarded against the captors.

An enumeration of the cases in which individuals have been prosecuted for infringing, or attempting to infringe, our neutrality in aid
[16] of the governments of New *Spain, and in which vessels have been seized and libeled under the act of the 5th of June, 1794, together with a list of the vessels and property restored to the original Spanish owners, (confining the whole to the operations of the year commencing March, 1815, and ending February, 1816,) will show more conclusively, perhaps, than anything else can, how totally without foundation are the complaints and how misplaced are the assertions of the minister of Spain on this head.

The names of individuals prosecuted in the district court of the United States for the Louisiana district during the year 1815, for violating, or attempting to violate, the neutrality of the United States in aid of the governments of the United Provinces of New Granada, and of the United Provinces of Mexico: José Alvarry Toledo, Julius Ceasar Amigone, Vincent Gambie, John Robinson, Romain Very, Pierre Lameson, Bernard Bourden.

List of vessels libeled for illegal outfits of the same governments during the same period: Brig Flora Americana, restored; schooner Presidente, condemned; schooner Petit Melan, condemned; schooner General Bolivar, discontinued; schooner Eugenen, *alias* Indiana, condemned; schooner Two Brothers, restored.

[17] *Enumeration of vessels and property brought within the Louisiana district, captured under the flags and by the authority of the governments of New Grenada and of Mexico, libeled on the part of the original Spanish owners, and restored upon the ground that the capturing vessels had been fitted out and armed, or had their force augmented within the waters of the United States:

1. Schooner Cometa, restored April, 1815.

2. Schooner Dorada, proceeds restored 16th May, 1815, $3,050.
3. Schooner Amiable Maria, $3,850.
4. Schooner Experimento, restored 3d August.
5. The polacre brig De Regla and cargo, proceeds restored 18th December, 1815, $19,209.50.
6. Schooner Alerta and cargo, being the proceeds of the capture of about eighteen small vessels, restored 18th December, 1815, $62,150.05.

Damages awarded to the original owners against the captors in the two foregoing cases, $55,272.99.

7. Cargo of the schooner Petit Melan, restored 1st February, 1816, $2,444.31.
8. Cargo of the schooner Presidente, restored 1st February, 1816, $10,931.15.
9. Schooner Sante Ritor and cargo, restored 1st February, 1816, $37,962.94.

The preceding account of Spanish property restored to the original proprietors, after being in the possession *of the enemies of [18] Spain, is defective, inasmuch as it does not comprehend the whole of the cases of restoration that have taken place within the period to which the detail is confined. The very hasty manner in which I have made this communication did not admit of a more accurate statement. The principal cases, however, are included in it.

In several other cases where the property was claimed for the original Spanish owners, the claims were dismissed, because it did not appear that any violation of our neutrality had taken place. The capturing vessels were not armed, nor was their force augmented within our jurisdiction, nor had the captures been made within a marine league of our shore. The principles that guided the decisions of the court, as well in restoring the property captured where our neutral means had been used, as in declining all interference where that was not the case, manifest, I think, a disposition to, and an exercise of, the most rigid neutrality between the parties.

If the whole of this letter is not an act of supererogation, to dwell longer upon those parts of the correspondence of the Chevalier de Onis which relate to Louisiana would at least be so considered.

I have the honor to be, &c.,

JOHN DICK.

Hon. JAMES MONROE.

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[19] *Mr. Monroe, Secretary of State, to Mr. Dick, district attorney.*

DEPARTMENT OF STATE,
June 7, 1816.

SIR: I have the honor to acknowledge the receipt of your very interesting letter of the 1st of March. Although I was satisfied the representations made to the Chevalier de Onis, on which he founded his communications to me, were greatly exaggerated or entirely groundless, yet I am particularly gratified in having received this letter, because it abundantly establishes the fact that all the constituted authorities at New Orleans had done all that the laws required at their hands.

I have the honor to be, &c.,

JAMES MONROE.

JOHN DICK, Esq.,
New Orleans, Louisiana.

Mr. McCulloch, collector, to Sailing Master Dorsey, United States Navy.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, June 25, 1816.

SIR: In consequence of instructions heretofore given from the
[20] Department *of War and the Navy, I have called on the military and naval commanders at this station to furnish a sufficient force to suppress an illegal enterprise, partly entered upon already, and now preparing to be renewed with increased forces. The laws are violated and the peace of the United States hazarded by such actions, whether those concerned are aware of their nature and consequences or not.

The most of the persons engaged in the present instance are persons uninformed in these respects, and certain instances of injury done to our seamen and others have, perhaps, exerted a resentment which justifies itself with them; but the depredations committed, or intended to be committed, are equally dishonorable and unlawful, until authorized by the Government as just retaliation. You will receive herewith the laws of the United States which relate to this case; also the instructions of the owner of this vessel, a citizen of the United States, as he hath sworn, directing this unlawful proceeding. You will go as speedily as possible with the vessel you command, placed at my requisi-
[21] tion *by Captain Spence for this purpose, to East River, in Mock Jack Bay, or to any other place where you may learn that this vessel lays, and take possession of and bring her to this port, with all effects, money, goods, and merchandise found on board, or any other vessel acting or used as a consort storeship or receiving vessel, unless she is found to be already in the hands of the Government by any of its officers, when you will please to afford any assistance in your power to secure and defend her thus, or to transport her to a place of safety. I wish you, sir, a pleasant time and speedy return, with the satisfaction of having promptly performed a duty to justice and to your country.

I remain, in haste, respectfully,

J. H. McCULLOCH.

BISCO DORSEY, Esq.,
In Command United States Schooner Asp.

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[22] **Mr. Glenn, district attorney, to Mr. McCulloch, collector.*

BALTIMORE, *June* 29, 1816.

DEAR SIR: I return you the papers relative to the schooner Romp, which were yesterday handed to me, and beg leave to state that if any proof can be obtained going to show that any persons in the district of Maryland have been concerned in fitting out the said schooner, of furnishing her with any materials necessary for the cruise from which she has lately returned, with a knowledge of her destination, or with a knowledge of the purpose for which she was fitted out, I shall feel great pleasure in laying the proof before the grand jury at the next session of the circuit court. In the mean time, if testimony can be had, a warrant may be immediately issued, and the party charged arrested, and made to enter into a recognizance for his appearance at the court. I find the vessel has been seized in Virginia, and a part of the crew ar-

rested. Perhaps in the progress of the investigation there something may be disclosed which may lead to a prosecution here.

I am, very respectfully, your obedient servant,

ELIAS GLENN.

JAS. H. MCCULLOCH, Esq., *Baltimore.*

Mr. Monroe, Secretary of State, to Mr. McCulloch, collector.

DEPARTMENT OF STATE,
July 19, 1816.

23] *SIR: The minister of Spain has stated to this Department that the vessels of which a memorandum is inclosed have been fitted out and armed in the port of Baltimore, by a company of merchants residing in the different ports of the United States, and that these vessels are to cruise off the port of Cadiz, under the flag of Buenos Ayres, for the purpose of capturing the vessels belonging to the subjects of His Catholic Majesty. As it is equally contrary to our own laws, and the pacific relations between this country and Spain, that any such arrangement should take place in our ports, I persuade myself that the representations made to the Spanish minister are unfounded. It is necessary, however, that an inquiry should be made into the facts connected with the equipment and departure of these vessels, if any such have recently departed from the port of Baltimore. I have, therefore, to request that you will transmit to this Department, at as early a period as circumstances will permit, all the information which the records of your office will afford in relation to each of the vessels. If there are any other facts within your knowledge calculated to prove or disprove the allegations of the Spanish minister, you will oblige me by communicating them in such way as you may deem proper. I am satisfied that no violation of our laws has been permitted by you, but as it is possible that these vessels may have enlarged their crews, or furnished themselves with arms after they have gone out of your district, I [24] should be glad *to know it, if the fact is so, as in that case additional precautionary measures may be deemed necessary by the President to prevent like occurrences in future. It is essential to the reputation of our country, as well as to its policy, that, so long as we profess to be neutral in the controversy between Spain and her colonies, all proper measures should be taken effectually to preserve our neutrality.

JAMES MONROE.

Mr. McCulloch, collector, to Mr. Monroe, Secretary of State.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, July 23, 1816.

SIR: I should have answered your letter of the 19th instant yesterday, when received, but an influx of business having occurred at the moment, it was buried inadvertently under accumulated papers not read by me before this morning.

With respect to one of the vessels mentioned in the list, as stated by the Spanish minister, to have been illegally armed here, there exists some reason for complaint. The rest are all rumors, or suggestions, of apprehension without reality.

The schooner Romp was purchased here on the 14th of March, and on the 18th of April last, by bills of sale of those dates from the owners separately as appears. She was cleared on the 10th of April, under temporary register, as owned by Thomas Taylor, who made the
[25] usual oath of his being a citizen of Wilmington, Delaware, for *a voyage to Buenos Ayres, and no cause of suspicion appeared nor was any armament known to be added to her at this port. On the 24th ultimo, the collector of Havre de Grace came purposely from that place to exhibit certain papers accidentally thrown into his hands, which discovered that the destination of this vessel had been altered, and her character changed after her departure from Baltimore; that foreign colors had been hoisted and depredations committed upon Spanish vessels by her commander and crew; and that the crew had mutinied, displaced the captain, and sent him with others on board vessels they had spoken. The schooner was then brought back to the Chesapeake, and the crew abandoned her and separated, having first divided the property found on board. Immediate measures were taken to procure a vessel, and to seize the schooner wherever she could be found, and as we were entirely destitute of any force here that could be commanded by the officers of the customs, application was made to the commander on the naval station here for an armed vessel that might be dispatched on the business. He was absent in the country, and no answer was received until the next day. In the interim, the officer who had charge of the navy-yard applied himself to prepare the United States schooner Asp, which was here as a receiving-vessel, with a very few men, and wholly disarmed, and by the exertions of sailing-master Dorsey, the vessel took in stores
[26] and guns during the night and was ready as soon *as the order came from Captain Spence to proceed next day. I had also applied to Colonel Armistiad for a detachment of troops to strengthen the expedition, which was readily granted under a commissioned officer and the Asp sailed immediately with instructions from this office t seize and bring to this port for examination the schooner Romp, a any vessels found carrying men, stores, &c., or appearing as attached to and consorted with her, unless found to be already in the hands of Government, in which case they would afford every assistance to secure, defend, and transport her to a place of safety. This was done under an apprehension that a number of men had been engaged to replace her former crew, &c. Before the Asp could arrive, the Romp had been seized by the collector of York, and thus it appears that three officers of the United States, from different situations, have exerted themselves to suppress the attempt upon the first information, as a violation of the laws and in opposition to the will of Government.

The schooner Terry is unknown to us, unless a vessel belonging to the eastward is intended, which entered and cleared here coastwise, being a licensed vessel formerly. (Upon search made in our papers no such vessel appears for a long time to have been here, though when writing the first lines I thought I had a recollection of her, but it must have been from reports of other places, and, as conjectured above, to the eastward.)

[27] *The Orb, Almida, captain, cleared from this port for Havana, on the 16th May last, and we have no knowledge of anything amiss in her case. Captain Almida had been taken and imprisoned at Carthagena, where he lost his vessel and suffered otherwise in a manner which, as I am told to-day, had drawn from him some threatening expressions since his return, but which seem to be more declarative of feeling than intention.

The Comet and Chasseur have both been sold at the Havana, where they had gone on trading-voyages and were, as we understand, bought for the purpose of attacking the vessels cruising against the Spaniards in that quarter.

Thus, sir, of the five vessels stated to be fitted here for hostility against Spain, one appears never to have been here; one is yet uncharged with any offense, and perhaps never will be, under the present owner; one has been seized, and every measure taken to vindicate the justice of the country, and two have been sold to the very government which complains of them in anticipation.

I am, sir, with great respect, your obedient servant,

J. H. McCULLOCH.

JAS. MONROE, Esq.

Mr. Monroe, Secretary of State, to district attorney for Virginia.

DEPARTMENT OF STATE,
July 26, 1816.

[28] *SIR: Your letter of the 11th of this month relative to the case of the Romp has been received. The Attorney-General thinks that it would be a proper step to set on foot a prosecution against Thomas Taylor, without delay, who, there is reason to think, may now be found within the district of Maryland. To this effect, you will be pleased to transmit under cover to this Department, as soon as you conveniently can, all the papers and documents in your possession, or within your reach, which bear upon his guilt. Should the attempt to arrest him succeed, you will be duly informed of the time of his trial, when it may become necessary to have the witnesses also ordered on to the place where it will be held. The proofs which you may forward will be replaced at the proper season in your hands, so as to subserve the purposes of trial in both districts. It is thought desirable the one against Thomas Taylor should, if practicable, be brought in first.

I have the honor to be, &c.,

JAMES MONROE.

[*Inclosed remarks of the Attorney-General in the case of the Romp.*]

I think it would be by all means proper to order a prosecution against Taylor. It is clear that this may be done in pursuance of the eighth section of the act of Congress of April 30, 1790, (vol. i, p. 100,) which allows the trial in cases like the present to be either in the

[29] *district where the offender may first be brought, or in that where he may be apprehended.

I am also disposed to think that it would be a judicious measure to try Taylor first, provided it can be done without too much delay to the trial of the offenders already under bail or in custody in Virginia. To this effect the district attorney of Delaware should be written to, and if the circuit court there will meet as soon as, or at no distant day after, the time fixed for the meeting of that in Virginia, it would be well to order the evidence deposited in Virginia to be transmitted to the Department, that it may be sent on to Delaware. It would be prudent to ascertain in the first instance from the attorney of the latter place if Taylor is really to be found there.

In any event it will be proper that the collector of Havre de Grace

should be written and directed to preserve, as intimated by Mr. Wirt, the documents that have fallen into his hands, so as to be able to obey a summons from whatever quarter to attend court at a future day. The alleged illegal voyage having had its inception at Baltimore, I think it also proper that the United States attorney in that city should be instructed to institute every practicable inquiry on his part with a view to the detection of the offenders.

In regard to the instructions to be sent out to Mr. Mitchell, the
[30] President's intimation seems sufficiently *explicit.

RICHARD RUSH.

WASHINGTON, *July* 23, 1816.

Mr. Monroe, Secretary of State, to Mr. Wirt, district attorney.

DEPARTMENT OF STATE,
August 2, 1816.

SIR: Your letter of the 30th of last month has been received, with all the accompanying papers. It appears that you have sent all within your reach, or control, but it is feared that unless the originals can be procured, obstacles will be thrown in the way of the prosecution against Taylor, at Baltimore. It is still deemed most advisable that the Government should direct proceedings against him first, being as far as is yet known the principal offender. To this end it is imagined that the original examinations, subscribed by the witnesses and attested by the magistrate, must be forwarded, and if these cannot be removed from the files of the clerk's office, where it is probable they may be, the attorney of the Government at Baltimore, it is apprehended, may experience embarrassments, unless the witnesses themselves are made to appear in person. The original custom-house papers may be dispensed with, as the collector at Baltimore could supply any defect that might be alleged in their authentification, but the letter of instructions from Taylor of the 11th of April, 1816, is an important document, the original of
[31] which, it is thought, it would be very desirable to have, if its *transmission be practicable. The papers that you sent are at any rate, for the present, returned, with a request that you will have the goodness to act upon the suggestion of this letter, so far as you may find it within your power.

If the original examinations are not forwarded, perhaps if the inclosed could be made to take the shape of an exemplification, under seal, they might the better serve the purpose of incipient steps at Baltimore.

I have the honor to be, &c.,

JAMES MONROE.

Mr. McCulloch, collector, to Captain Spence, United States Navy.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, August 19, 1816.

SIR: Information has just been given me, by the consul of Spain at this port, that a Spanish vessel, captured in the West Indies by an American citizen, as is supposed, and under South American colors, has been sent into our waters as a pr..., and that measures are taken to send down vessels from this port to take out the cargo, equally against

the civil and revenue laws. A necessity therefore arises to request your aid and co-operation by furnishing one of the vessels of the United States, sufficiently armed and manned, to proceed to the river Patuxent, where the vessel above mentioned is stated to be at present, for the purpose of seizing and conducting her to this port, that justice may be done according to the laws and the equitable intentions of the Government of the United States.

[32] *Expedition being necessary, allow me to request your orders in the case as promptly as possible.

I am, sir, yours,

J. H. McCULLOCH.

Captain SPENCE,
United States Navy.

Mr. McCulloch, collector, to Captain White.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, August 20, 1816.

SIR: You will please to proceed as expeditiously as possible with the United States cutter Active under your command to the river Patuxent, near the mouth of which it is said that a vessel captured from a Spanish subject, unlawfully, is at anchor as a prize, and from which goods are apprehended to be taken out with a view of introducing them into the United States. If you find the vessel seize her and bring her up to this port for legal examination, and at the same time observe if you meet with any goods taken out of her. If you discover, upon good information, that any goods not having been regularly entered according to law are lodged at any dwelling-house, barn, or store, it is necessary that you make oath before a magistrate and obtain a search-warrant, which can only be executed in the day-time. You may seize vessels in your way and examine their lading, giving as little trouble as possible. If they are from a foreign port, demand their manifest and indorse it agreeable to example given you. But as you are sent on a special business, stop nowhere going down, and as little as may be coming back, as you are not fitted for a cruise, and will be at considerable expense.

[33] *Be very cautious and steady, as well as vigilant and active: being new in your office much prudence is required, and I hope it will appear in the testimony that all shall render with whom you treat in any manner. Be courteous, but firm; cool, but determined; and much success attend this and all your attempts.

J. H. McCULLOCH.

STEPHEN WHITE.

Mr. Chacon, Spanish consul, to Mr. McCulloch, collector.

CONSULATE OF SPAIN,
Baltimore, August 26, 1816.

SIR: I had the satisfaction of receiving your letter of the 23d instant, in answer to mine of the same day. I am very much obliged to you for the measures you had the goodness to take to secure the Spanish prize I alluded to, and I hope she will be brought here to be delivered to her rightful owners.

This is now to call to your attention another unpleasant affair, which is of the greatest importance to the interest of the subjects of my nation. I have just got information that Captain Boniface Revilla, of the Spanish schooner Felix Cubana, which cleared lately at your office for Saint Martha, is secretly arming said schooner with guns and ammunitions, and is recruiting a crew here for the purpose of cruising against the Spanish vessels, under the revolutionary flag of Spanish America. I beg you, therefore, sir, to have the goodness to order, without loss of time, an examination to be made on said vessel, and to compel her captain to land all the implements of war and men he might have taken without your knowledge. As a proof of his bad intentions, I may state
[34] that he has not called at my office to have his *papers indorsed, and to receive the documents from me which are required by the Spanish laws. Please, sir, to excuse this trouble and apprise me of the result for my government.

I am, most respectfully, &c.,

PAUL CHACON,
His Catholic Majesty's Consul.

J. H. McCULLOCH, Esq.

Mr. McCulloch collector, to Mr. Dallas, Secretary of the Treasury.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, August 22, 1816.

SIR: In pursuance of the object reported as required heretofore, and of your authority in the case, I have purchased a vessel for the river service of about thirty-eight tons burden, to which Captain Stephen White has been appointed commander, provisionally, and qualified as inspector of the revenue for the purpose. There appeared a sudden occasion to employ the vessel, in consequence of an application from the Spanish consul stating that a brig captured from a Spanish subject by a vessel commanded by an American citizen, that had not long ago departed from this port, had been sent into the Patuxent River, and was then lying there, deserted by the crew who had brought her in, and was in danger of being carried off by a new crew dispatched for the purpose, and the United States cutter Active, as she is now called, was therefore instantly manned, furnished with small-arms, victualed, and sent down to arrest the vessel, if possible, and bring her to this port for examination.

The purchase of the schooner cost $1,300; her equipment on the present expedition will add some expense as to men and stores, but it remains to fit her further on her return for constant service. The proceeding, so far, is submitted for your approbation.

I am, &c.,

J. H. McCULLOCH.

A. J. DALLAS, Esq.

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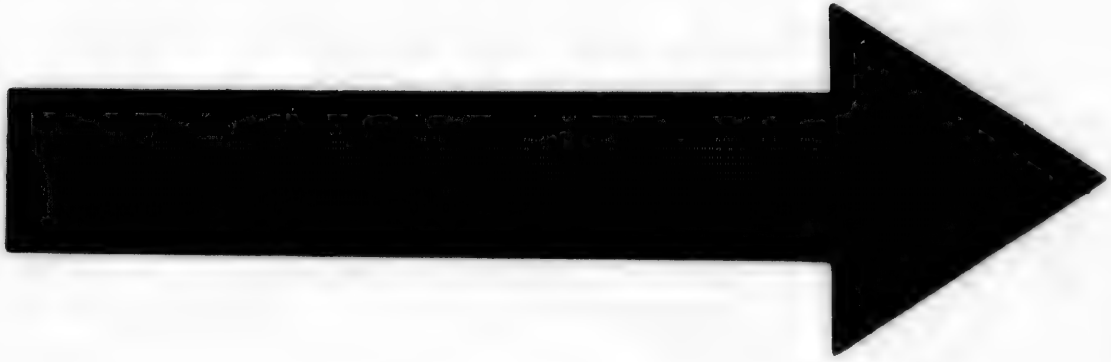
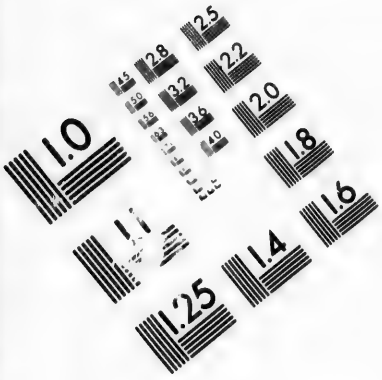
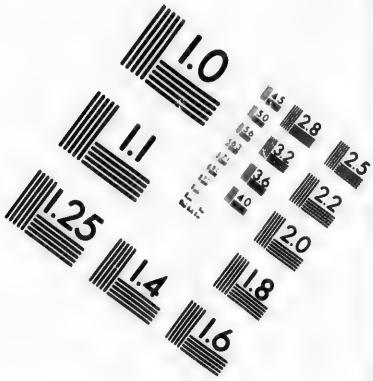
[35] *Mr. Glenn, district attorney, to Mr. Monroe, Secretary of State.*

BALTIMORE, *August* 26, 1816.

SIR: Owing to my absence from this city I did not receive your letter until this morning.







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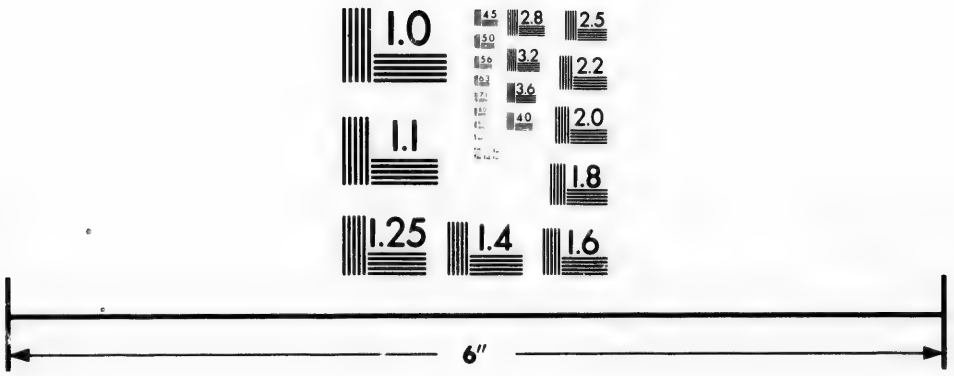

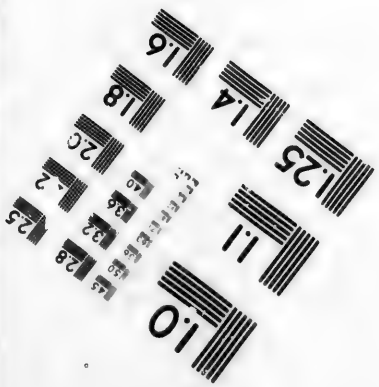

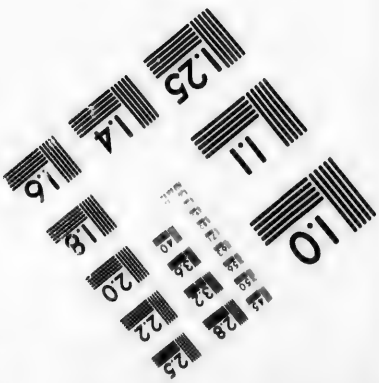

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A prosecution shall be immediately instituted against Thomas Taylor, and if he can be found you shall be informed of the course the business takes. I shall proceed against him both for piracy and a misdemeanor.

I have the honor to be, most respectfully, your obedient servant,

ELIAS GLENN.

Mr. Monroe, Secretary of State, to Mr. Blake, collector.

DEPARTMENT OF STATE,
August 27, 1816.

SIR: By the deposition of William Atkins, who was one of the prize crew of the Spanish brig St. Joseph, captured by the armed vessel Romp, from Baltimore, taken before and certified by William Wetmore, commissioner, appointed by the district court of the United States for Massachusetts, on the 11th of July last, it appears that property belonging to Spanish subjects, and captured with the first-mentioned vessel, was seized some time ago by the officers of the customs at Gloucester, Massachusetts, after having been smuggled ashore at Sandy Bay,
[36] by the assistance and through *the instrumentality of some fishermen in that neighborhood. The minister plenipotentiary of His Catholic Majesty having made a representation of the above-mentioned circumstances to this Department, and communicated a copy of the deposition referred to, I have informed him that you would be instructed to adopt all proper measures to promote the restoration of the goods to the parties entitled to them, which you will please, therefore, to do, and to keep this Department informed of the steps you take.

JAMES MONROE.

Mr. Lowry, surveyor, to Mr. McCulloch, collector.

SURVEYOR'S OFFICE,
August 28, 1816.

SIR: Agreeably to your instructions of this date, I have made the necessary investigation of the armament of the ship Caledonia, now at anchor below the White Rocks.

The number of cases of arms landed from on board that vessel the — instant, say ninety-nine cases, remaining in Major Jackson's warehouse—six of her guns, 9-pounders, are upon said Jackson's wharves. Her gunpowder remains in the powder-magazine. A considerable number of passengers are supposed to be on board. No warlike
[37] *preparations appear to be made since she discharged her military cargo.

The schooner Felix (Spanish) sailed without any military preparations whatever.

It is respectfully suggested that the cutter may be sent to observe what may be taken on board where she now lays.

It is said the Caledonia settled two feet deeper in the water previous to sailing, but this is merely hearsay.

I am, &c.,

WM. LOWRY,
Surveyor of the Port of Baltimore.

J. H. MCCULLOCH, Esq., *Collector.*

Mr. McCulloch, collector, to Mr. Monroe, Secretary of State.

CUSTOM HOUSE, BALTIMORE,
Collector's Office, August 29, 1816.

SIR: The owner of the schooner Romp, seized in York River, has been here once and again, but no process had issued against him for want of sufficient evidence. That has now appeared as far as to obtain warrants of arrest, and a writ is in the hands of the marshal, if it can be served. A Spanish brig arrived lately in Patuxent River, reported to be a prize to a cruiser belonging to Buenos Ayres. The pri-
[38] vateer is said to be a vessel that went from *here and was sold at Port au Prince. Her commander is said to be Captain Almeda, who was heretofore a citizen of this place; not long ago taken by the Spaniards, at Carthagena, on a trading-voyage. The prize crew, who had been ordered to Buenos Ayres, brought the vessel here and abandoned her. Upon information of the Spanish consul, a vessel was immediately fitted, manned, and sent to bring her to this port for examination, but she had been previously taken possession of by the collector of Nottingham. It is now reported, but not yet ascertained, that she is coming to this place, which is at the order of that collector, who has some of the men sent from here on board of her. Upon such view as I am able to give at present, and which is here submitted, the instructions that may be thought necessary for my government will be gladly received, but I cannot restrain a complaint on the difficult, harassing, and responsible duties that are thus laid upon a collector of the customs, and which bear little analogy to his object and his character.

I am, sir,

J. H. McCULLOCH.

JAMES MONROE, Esq.

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[39] **Mr. Glenn, district attorney, to Mr. Chacon, Spanish consul.*

BALTIMORE, *September* 4, 1816.

SIR: I have received your letter of the 31st ultimo, accompanied by a copy of a letter from Colonels Donde and Papamontes, to his excellency the Spanish minister, the originals purporting to bear date at New York the 28th ultimo. I have also to acknowledge the receipt of your two letters of yesterday, to all which I shall now proceed to reply. In fact, I was about preparing an answer to your first communication at the very moment your second was handed to me.

I find upon inspection of your last letter that you have misconceived my power and authority, and in order to put you in possession of a correct idea in that particular I must beg leave to suggest that my powers are merely legal and not political. I have already the power, when I am officially informed in a legal manner of any violation of the laws of the United States, to institute a prosecution against the offenders and conduct the same to a final issue, and I hope I shall always be ready and willing to go thus far on all proper occasions.

[40] *If any armaments be fitting out within the district of Maryland for the purpose of cruising against the subjects of the King of Spain, it is a breach of our laws, and the persons concerned therein are liable to punishment, but before I can take any legal steps in the affair

the facts of the case must be supported by affidavit taken before some judge or justice of the peace, and when that is done I will, without delay, proceed to call upon the offenders to answer for a breach of our laws. If, therefore, you will be pleased to furnish me with the names of any witnesses who can make out the case which you have stated, I will at once have them summoned, if within the reach of the process of our judges or justices, and attend to taking their depositions; or if you have it in your power to bring within this district any persons who can testify on the cases referred to, I will be prepared to receive the statements on oath as the foundation for a judicial inquiry into the conduct of the offenders. I shall here take occasion to say that I cannot proceed in the cases you have mentioned, upon the mere suggestion of any per-

[41] son, unless *that suggestion be accompanied by an affidavit; at present, therefore, I am not in possession of any information authorizing me to commence prosecution against the persons named in your letter.

Although I have, regularly, nothing to do with the political part of your letters, I cannot forbear to state that the government has on all occasions manifested the most scrupulous regard to impartiality and good faith toward His Catholic Majesty, the King of Spain, and will, I am quite sure, continue to pursue a similar course of conduct. If any suggestions be made that our Government support, favor, or protect the fitting out of vessels to cruise against Spain, I venture to pronounce them destitute of the least shadow of foundation in truth. But you say they are made by a banditti of renegadoes. It therefore follows that you yourself cannot believe them to be true.

The case of Sereno, as far as it comes under *my* notice, is a mere

[42] question whether the captain *of the vessel has violated any of our revenue laws, and thereby subjected the brig and cargo to forfeiture to the United States. Of course I could not look for any instructions of the kind you mention.

I have the honor to be, with considerations of the highest respect, sir, your most obedient servant,

ELIAS GLENN.

Don PAUL CHACON,
His Catholic Majesty's Consul at Baltimore.

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[43] **Mr. Monroe, Secretary of State, to Mr. Glenn, district attorney.*

DEPARTMENT OF STATE,
September 12, 1816.

SIR: You will herewith receive the translated copy of a letter to the Chevalier de Onis, the representative of His Catholic Majesty, from Jose Morales y Donde and Fernando Martz, pasa montes at New York, on the subject of an expedition that General Mina is said to be preparing at Baltimore against the Spanish colonies in America.

Mr. Onis has been invited by this Department to secure the attendance at Baltimore of these two persons, with a view to their substantiating, in a legal form, the facts which they state in their letter, and he has likewise been informed that the necessary instructions would be given to you in the case. You will please therefore to make all needful inquiries into the circumstances disclosed by the letter in question, and to adopt such measures on the occasion as may be required by the

laws of the United States, whether the witnesses whom the Chevalier de Onis is invited to send to Baltimore appear there or not.

I am, very respectfully, sir, your obedient servant,

JAMES MONROE.

ELIAS GLENN, Esq.,
&c., &c., &c.

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[44] * *Mr. Graham, Secretary of State, to Mr. McCulloch, collector.*

DEPARTMENT OF STATE,
September 12, 1816.

SIR: In the absence of the Secretary, I take the liberty of inclosing the copy of a letter to the Chevalier de Onis, which has been communicated by him to this Department, in relation to a military expedition against the Spanish colonies, connected with a vessel in your district, which a person, calling himself General Mina, is said to be preparing at Baltimore. A copy of the letter referred to has been sent to the district attorney, Mr. Glenn, who will, it is presumed, confer with you upon the subject of it.

I have the honor to be, &c.,

JOHN GRAHAM.

Mr. McCulloch, collector, to Messrs. Hanson and Watts.

CUSTOM-HOUSE, BALTIMORE, *November* 5, 1816.

Messrs. W. H. HANSON and D. B. WATTS:

You will please proceed in the schooner, hired for this purpose, by the mouth of Magothy River, by Patuxent, and still lower, if found necessary, in search of the revenue-cutter Active, Captain Beard, to whom you will deliver the letter directed to him and communicate any information you have upon the business on which you are commissioned. It may be necessary to stretch over to the Eastern Shore below Kent Island, to
[45] look out for him, and perhaps at night to hoist a light *if nothing in your consideration forbids. If any other public vessel is met with, you may inform them of the object, and require their aid in its attainment. If the cutter is not this side of Annapolis, or in sight, it will be proper to run into that port. Communicate with the collector and Mr. Thomas H. Bowie there, confidentially. You can, without loss of time, then either proceed to look for the cutter or act for yourselves, as circumstances prescribe, in performance of your duty as officers of the customs on shore or the water, observing all the cautions heretofore delivered on similar occasions, especially in cases of search or seizure in dwelling-houses. When you find the cutter you may transfer yourselves with the men under your command to that vessel and dismiss the hired schooner, with information to this office. But if you are not required to continue there or the men are not wanted, they may return in her. If the business appears to require greater force, information must instantly be sent while Captain Beard watches the suspicious vessel.

Endeavors will be used here to dispatch the United States sloop Asp, with sufficient preparations to meet the exigence. It will be well to keep the men below when in sight of any persons likely to be effected by their appearance, the arms, until wanted, to be kept under your hands in the cabin.

J. H. McCULLOCH.

[46] **Mr. McCulloch, collector, to Captain Beard.*

CUSTOM-HOUSE, BALTIMORE, *November* 5, 1816.

Captain BEARD: Information is just given that a considerable quantity of goods has been landed at Annapolis from on board a Buenos Ayres privateer schooner, which was yesterday morning lying at anchor between Horn and Seeley's Point; that it has been ascertained that a further quantity was to have been put on board a schooner with bright varnished sides, supposed to be the Holliday Oak, commanded by Captain Holliday Oak, of Annapolis, with a view to their transportation to Magothy River or this place. Though your force may be inadequate to take forcible possession of the privateer, yet I think it will be proper that you should make use of some exertion for the purpose and bring her into port for investigation. Probably by showing your flag she will quietly submit to authority.

At any rate you will receive by the vessel which carries this a re-enforcement of six men armed, under the direction of Messrs. W. H. Hansom and D. B. Watts, inspectors of the customs, who will assist in every measure necessary to take or secure the vessel and property which you may seize or think proper to detain. The schooner hired for this object must be dismissed as soon as possible, as well as the men,
[47] when their services are no longer needed. You can re*ceive them on board the cutter if you need them, and if there is a resistance threatened that you do not think it prudent to encounter, stay by the offender, and dispatch a messenger to me in the most expeditious manner, and the United States sloop of war here will be applied for immediately with a force sufficient to overcome it.

The vessel described before (the Holliday Oak) appears like the Annapolis packet, with sky-blue quarters, bright varnished bottom, &c.; main top-mast, the mast raking much abaft. You have already received such general instructions that, with the advice of the officers sent, you will be able to act in any emergency.

Your obedient servant,

JAMES H. McCULLOCH.

Mr. McCulloch, collector, to the surveyor.

CUSTOM-HOUSE, BALTIMORE, *December* 13, 1816.

SIR: Be pleased to direct an officer to examine the schooner Romp, and if found to be increased in armament, or further prepared for hostile action than at her arrival here, order such disarming and dismantling as shall render her to her just state and condition, and prohibit the owners or commanders from taking more men than are sufficient to navigate the vessel, on pain of stoppage or seizure.

[48] *Be pleased also to direct an officer to visit the brig Independence, D. Choyter, of Buenos Ayres, and inspect her armament, informing the commander that no additional strength in guns, men, or equipment can be made on board his vessel to the state she was on arrival, and if any such addition is made that she cannot proceed from this port until reduced to her first condition in these respects.

J. H. McCULLOCH.

[4] *Message of the President.*

WASHINGTON, *December* 26, 1816.

To the Senate and House of Representatives of the United States:

It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace toward belligerent parties, and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States.

With a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States, I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped, or in a course of equipment, with a warlike force, within the jurisdiction of the United States, or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armament, with the exceptions in such provisions proper for the cases of merchant-vessels furnished with the defensive armaments usual on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws, and which the law of nations does not require the United States to prohibit.

JAMES MADISON.

Mr. Monroe, Secretary of State, to Mr. McCulloch, collector.

DEPARTMENT OF STATE,
January 3, 1817.

[50] *SIR: There being some reason to believe that the schooner Mangore, which arrived and reported herself, on the 28th of last month, at your port as a South American cruiser, was originally fitted out for her cruise at Baltimore, in violation of our laws, you are particularly requested to put the attorney of the United States in possession of all the testimony which you may have or be able to obtain relative to such a charge. It is not doubted that you will cause every step to be taken calculated to bring to light the real transaction in this case, so that whatever breach of the laws of the United States has taken place may be forthwith punished.

JAMES MONROE.

Mr. Monroe, Secretary of State, to Mr. Glenn, district attorney.

DEPARTMENT OF STATE,
January 3, 1817.

SIR: There being good reason to suppose that the schooner Mangore, alleged to be a South American cruiser, which arrived at Baltimore on the 28th of last month, was originally fitted out at that port, probably under some other name, with a view to exercise belligerent acts upon the ocean, against nations with which we are at peace, you are hereby particularly requested to institute prosecutions against all parties now to be found, who may have had any concern in such object so manifestly in contravention of the laws of the United States. The collector of

[51] Baltimore will be *instructed to furnish you with all the evidence of which he is in possession, or which he can obtain, bearing upon this

charge, and it is not doubted but that every proper step will be taken on your part, necessary to vindicate, as far as may be practicable, the authority of the laws.

JAMES MONROE.

Mr. McCulloch, collector, to Mr. Glenn, district attorney.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, January 9, 1817.

SIR: In compliance with the request of the Secretary of State, I now communicate all the information possessed by this office respecting the schooner Mangore, now lying in this port, of whose character inquiry has been made in the correspondence of the Department on the 3d instant.

It had been stated in a letter from this office, the 30th ultimo, that this vessel entered here on the 28th previous, under South American colors, commanded by James Barnes, commissioned from Buenos Ayres, and with letter of marque and reprisal against the subjects of Spain. Barnes was before that time a citizen of the United States, nor has any proof of formal expatriation been exhibited here. He entered as in want of provisions and in need of repairs, from sea, with a few goods which he proposed to enter for the purpose of sale, probably to defray expenses. The entry of the goods was not received, but an ex-
[52] amination was made for *the purpose of identifying the schooner with one formerly belonging to this port called the Swift, and it appears by a report made to us this day that she is the same vessel. It is only in my power to add, that the schooner Swift cleared hence on the 3d August, commanded by Jesse Huffington, as the property of Mark L. Dexaves, a naturalized citizen, through his agent, Philip Mereier.

Your obedient servant,

J. H. McCULLOCH.

ELIAS GLENN, Esq.

Mr. Monroe, Secretary of State, to Mr. Glenn, district attorney.

DEPARTMENT OF STATE,
February 15, 1817.

SIR: I have the honor to send you inclosed translations of three letters from the Chevalier de Onis to this Department, dated the 10th and 12th instant, on the subject of alleged violations of the laws of the United States, in the cases referred to in these letters, to the injury of the subjects of the Crown of Spain, and asking the interposition of this Department toward obtaining redress in behalf of the parties particularly aggrieved. As far as your official interposition or co-operation may be proper, you will be pleased therefore to use it.

JAMES MONROE.

Mr. Glenn, district attorney, to Mr. Monroe, Secretary of State.

WASHINGTON, *February* 25, 1817.

[53] SIR: I had the honor to receive your *letter of the 15th instant, accompanied by the copies of three letters from the Chevalier de

Onis to your Department, severally dated on the 10th, 11th, and 12th of February, at the very moment I was leaving home for this place, to all which I now beg leave to reply.

In answer to the matters stated in the first extract of a letter from his excellency de Onis, I state that I have no knowledge of the brig Paz having been bought for the purpose of cruising against the commerce of Spain. If I shall be able to acquire such information, immediate steps shall be taken to put a stop to any further proceeding on the part of the owner or agents of that vessel in their contemplated views.

I had no personal knowledge of the illegal proceedings in the case of the brig Fourth of July, nor was any information communicated to me upon that subject; consequently, I could take no notice of the case officially, and I was in a similar predicament with respect to the Romp.

In answer to the suggestions contained in the second letter from his excellency, I beg leave to say that, upon the receipt of a former letter from you, I was induced to make very considerable exertions to ascertain whether there was any reasonable ground to believe that the schooner Mangore could in any way be made liable to a prosecution; and, without obtaining any very clear information on the subject, I filed an
[54] *ex-officio* information against her. The agents of the owners thereupon came forward before the district judge and filed a claim for the vessel, and denied in writing that she was intended to be used in any manner in violation of the laws of the United States. The judge decided he would not, upon my mere suggestion in the libel in that preliminary stage of the cause, detain her, if the parties claiming her would enter into a stipulation to answer to the Government for the amount of her appraised value in case she should hereafter be condemned. This stipulation being entered into, she was, accordingly, delivered up to the claimants. The cause will, however, proceed to a final hearing, when I hope to have her condemned. So anxious have I shown myself on this occasion to punish the offenders, that I drew up a statement in writing, containing all the information possessed by the collector of the port of Baltimore upon the subject, and obtained his oath to the same; upon which statement a warrant of arrest issued against Captain Barnes, the first officer of the schooner Mangore. The process was, without delay, placed in the hands of the marshal, with positive instructions to have the man arrested. This is all I can do in this affair, and I will add that my conduct in this and all other cases of a similar nature has met the entire approbation of Mr. Chacon, the Spanish consul, who is a most vigilant, active, and intelligent officer. Without
[55] some fresh *charges against the Mangore, I cannot consider myself bound to institute new proceedings against her. If Captain Barnes is in possession of property illegally taken from Spanish subjects the fact is unknown to me. In answer to the third letter from the Spanish minister, I state that, upon information given me by the Spanish consul, I took with me to a judicial officer the men who were willing to give evidence against Captain Chase and his lieutenants, and warrants of arrest were by that officer forthwith issued against these officers, which warrants were placed in the hands of the marshal, the proper executive officer in such cases. I have not yet been informed whether the marshal has arrested any of the persons named. In all these proceedings the Spanish consul will do me the justice to say I have used my most zealous exertions to do his government every possible service within the scope of my power and authority.

I have thus endeavored to give you an outline of the proceedings in the cases to which your letter refers, and you may rest well assured, as

far as my official interposition or co-operation can be properly used, it shall at all times be most cheerfully afforded.

You are well aware I cannot proceed to arrest persons or property under the laws of our country for a breach of those laws, upon a mere suggestion alone, but whenever a suggestion shall be accompanied
[56] by anything like proof, I will take great pleasure in *prosecuting the offenders to punishment, and their property to condemnation in all proper cases.

I have the honor to be, with very sincere respect, your most obedient servant,

ELIAS GLENN.

Hon. JAMES MONROE.

Neutrality act of March 3, 1817.—(3 U. S. Stat. at Large, p. 370.)

CHAPTER LVIII.—AN ACT more effectually to preserve the neutral relations of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any such ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities, or to aid or co-operate in any warlike measure whatever, against the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace, every such person so offending shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than ten thousand dollars, and the term of imprisonment shall not exceed ten years; and every such ship or vessel, with her tackle, ap-
[57] parel, and furniture, together with all materials, arms, *ammunition and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of any person who shall give information, and the other half to the use of the United States.

SEC. 2. *And be it further enacted*, That the owners of all armed ships sailing out of the ports of the United States, and owned wholly or in part by citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners in cruising or committing hostilities, or in aiding or co-operating in any warlike measure, against the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace.

SEC. 3. *And be it further enacted*, That the collectors of the customs be, and they are hereby, respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart from the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board

or other circumstances shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President be had thereupon, or until the owner enters into bond and sureties to the United States, prior to
[58] clearing out the same, *in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by the owner or owners in cruising or committing hostilities, or in aiding or co-operating in any warlike measure against the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace.

SEC. 4. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser, or armed vessel in the service of a foreign prince or state, or any colony, district, or people, or belonging to the subjects or citizens of any such prince, state, colony, district, or people, the same being at war with any foreign prince or state, with whom the United States are at peace, by adding to the number or size of the guns of such vessels prepared for use or by the addition thereto of any equipment solely applicable to war, every such person so offending shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined and imprisoned, at the discretion of the court in which the conviction shall be had, so as that such fines shall not exceed one thousand dollars nor the term of imprisonment be more than one year.

SEC. 5. *And be it further enacted*, That this act shall continue
[59] *in force for the term of two years.

Approved March 3, 1817.

Mr. Rush, Acting Secretary of State, to Mr. Glenn, district attorney.

DEPARTMENT OF STATE,
March 18, 1817.

SIR: I have the honor to send to you herewith the copy of a list of articles stated to have been taken by the private armed vessel the Potosi from the Spanish ship Ciencia, which list has been communicated to this office by the Chevalier de Onis, His Catholic Majesty's representative, with a request that the necessary instructions should be forwarded to the law-officer of the Government at Baltimore, to afford his aid to the Spanish consul there, in the attachment which he had laid upon a part of these articles in the hands of Henry Didier. You will please, therefore, to render your official aid to the Spanish consul in the above case, as far as circumstances may, in your judgment, make it necessary and proper.

RICHARD RUSH,
Acting Secretary of State.

ELIAS GLENN,
Attorney of the United States,
For the District of Maryland, Baltimore.

Mr. Rush, Acting Secretary of State, to Mr. McCulloch, collector.

DEPARTMENT OF STATE,
March 21, 1817.

SIR: By a letter of this date the attorney of the United States
[60] has been requested to furnish every *information in his power relative to alleged outfits of several vessels at Baltimore. The subject being deemed of importance at this Department, I have to request that you will be so obliging as to afford that officer all the aid in your power toward the objects which the letter to him embraces. He will show it to you, and I have to add how desirable it is that the information which it calls for should be obtained in a manner the most ample and exact that is practicable.

I have the honor to be, with great respect, your most obedient servant,

RICHARD RUSH,
Acting Secretary of State.

The COLLECTOR *of Baltimore.*

Mr. Rush, Acting Secretary of State, to Mr. Wirt, district attorney.

DEPARTMENT OF STATE,
March 28, 1817.

SIR: I have the honor to send you the copy of a letter just written by this Department to the collector of the customs at Norfolk, and to request your advice and assistance in the matters referred to in that letter, should it be necessary, according to the suggestion made by Mr. Mallory, the collector.

RICHARD RUSH,
Acting Secretary of State.

WILLIAM WIRT,
District Attorney for Virginia.

Mr. Rush, Acting Secretary of State, to Mr. Mallory, collector.

DEPARTMENT OF STATE,
March 28, 1817.

61] SIR: It has been stated to this *Department that two armed vessels, one named the Independence of the South, the other the Altaveda, have lately arrived at Norfolk from voyages, in the course of which they have cruised against, and made captures of, vessels or property belonging to the subjects of the King of Spain. You are requested to make strict inquiry into the grounds of these allegations, and transmit such information as you may be able to obtain. It will embrace the time and manner of their arrival, their force, the flag which they bear, the port or place whence they last sailed, the entry, if any, which they made, the cargo or articles on board of them, their motives for coming into port, and, generally, such other facts and circumstances as may tend to show their true character and objects. If there be any proof of their having committed, or of their intending to commit, an infraction of any of the laws or treaties of the United States, you will cause prosecutions, subject to the advice of the attorney of the United States, to be instituted against all parties concerned, or such other legal steps taken

as events may make necessary and justice require. To further this end I inclose you an authenticated copy of an act of Congress passed on the 3d of this month, (lest it may not before have reached you,) to preserve more effectually the neutral relations of the United States in case any recurrence to its provisions should become necessary.

RICHARD RUSH,
Acting Secretary of State.

CHAS. K. MALLORY,
Collector, Norfolk.

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[62] **Mr. Rush, Acting Secretary of State, to Mr. McCulloch, collector.*

DEPARTMENT OF STATE,
March 28, 1817.

SIR: It has been stated to this Department that a vessel called the Congress (formerly, as is said, the Orb) has arrived at Baltimore, having returned from a voyage, in the course of which it is alleged that she has committed depredations upon the property of subjects of the King of Spain. It is also stated that this vessel was fitted out at and sailed from Baltimore, for the purpose of committing such depredations. You are requested to inquire into these charges, and transmit all the information you may be able to obtain relative to the true character and objects of this vessel, the conduct of those having any concern in her, and especially what cargo or articles were on board of her when she arrived, whence, as far as can be known, they were obtained, and how they have been disposed of. If there be any sufficient proof that this vessel either has committed, or that she intends to commit, a breach of any of the laws or treaties of the United States, you will advise with the district attorney, and cause prosecutions to be forthwith instituted against all parties concerned, and such other steps taken, whether with a view to prevent or punish offenses, as justice requires, and the laws will sanction.

[63] It has also been stated that a certain person, *known as Captain or Commodore Taylor, was some time ago engaged in Baltimore in fitting out one or more vessels to cruise against the commerce of Spain, that they did in fact afterward so cruise, and have lately arrived at Norfolk, and that there is reason to think that Captain Taylor is now in Baltimore. Should you be able to ascertain that there is any foundation for this charge, you will be pleased to cause the law to be put in force against him.

RICHARD RUSH,
Acting Secretary of State.

JAMES H. MCCULLOCH,
Collector of Customs, Baltimore.

Mr. Zamorano, Spanish consul, to Mr. McCulloch, collector.

CONSULATE OF SPAIN,
Baltimore, April 14, 1817.

SIR: Having been informed that a corvette-built ship, intended as a privateer, has dropped down the river for the purpose of arming and

proceeding to sea on a cruise in direct opposition to the act of Congress of the 3d March, ultimo, and the existing treaty with Spain, I take the liberty to notify you of this circumstance that measures may be taken to prevent their infraction.

I have the honor to be, respectfully, sir, your most obedient servant,

JOAQUIN ZAMORANO.

JAMES MCCULLOCH, Esq.,
Collector.

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[64] **Mr. McCulloch, collector, to Mr. Zamorano, Spanish consul.*

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, April 14, 1817.

SIR: If you can name the vessel and specify any circumstance to warrant the proceeding, immediate attention will be paid to the object by pursuing her course as far as possible.

Allow me to say that if your note just received respects the ship Idas, she was searched by me in consequence of certain suspicions on Saturday evening, and was found without arms, ammunition, or any warlike equipment, and cleared in ballast coastwise.

I am, sir, &c.,

J. H. MCCULLOCH.

Don JOAQUIN ZAMORANO,
Consul of Spain.

Mr. McCulloch, collector, to Captain Beard.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, April 16, 1817.

SIR: Information has been given me that the ship Idas, Fisher master, which cleared hence on the 12th instant, remains below the mouth of the river, and that her officers are in town procuring a number of men to go down to her. She is fitted for arming, but was examined before the clearance and found to have no arms or ammunition on board, and suffered to proceed to Snow Hill, as you will see by her clearance.

[65] If she has now arms or *ammunition on board and an extra number of men, you will please to detain her and bring her back, as she cleared in ballast for a port in the bay. You can judge by her having on board additional articles, particularly guns, how far they appear to be acting fairly, of the contrary of which there is great suspicion. But if she appears as when cleared, lay by her and attend her till she goes into the district of her destination, and then inform the collector of Snow Hill as follows:

The ship Idas is informed against here as going to the Tangiers to fit out for cruising. The names are spelled as they appear in a paper before me, Clement Cathet, master; Daniel Armstrong, Pristed Davies, officers; Henry Bunues, master of arms; J. Rover, Thos. Wood, D. Proxen, foremastmen.

You will suffer no vessel to board her carrying guns or men, but detain and bring them back.

JAMES H. MCCULLOCH.

ALEXANDER BEARD.

Mr. J. H. McCulloch to Captain Beard.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, May 2, 1817.

SIR: Information given to-day states that a number of negroes, taken in some unknown vessel, have been landed on the lower end of Kent Island, or in the bay in Talbot County, some of whom are at present in the possession or employ of a Mr. Haddaway, in one or other of
[66] these places. It is not unlikely that goods *of some sort are also landed in the same manner, supposed from the privateer Fourth of July, reported to be in the Chesapeake. You will please to proceed immediately to ascertain the truth of these declarations, taking with you blank warrants of search, which will be furnished here if you are without them. Be sure, in case of sufficient information being given you, to obtain warrants from a magistrate, and seize the goods or negroes so landed against law and bring them to this place for trial, unless circumstances require trial in the district [1]where they may be taken, of which you may be informed, if in the neighborhood of any judge of a court.

It is likewise necessary to make inquiry after the privateer, bringing the persons or goods above mentioned, and if proof of her being landed by her, or by a prize of her, can be obtained, it is necessary to detain and bring here that vessel or vessels, if your force is adequate. Application may be made to commander of the militia of the United States for assistance, if needed. But if resistance unequal to your force be offered, it will be proper to run to Norfolk and obtain the aid of any naval or military force there for the purpose of overcoming any unlawful opposition. The revenue-cutter of Norfolk, with you, may be
[67] enough, but you can better judge. It is *preferable by a superior force to awe into submission rather than by attempting seizure with a smaller force to occasion a conflict, even though you should think it probable it would end successfully. Circumstances may, however, even require that to be hazarded, but then it must be gone through with a determination that will leave little to chance. Remonstrance and warning must be previously employed in the worst case supposed.

Hastily, yours,

J. H. McCULLOCH.

Captain ALEX. BEARD.

Mr. McCulloch, collector, to Captain Beard.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, June 27, 1819.

SIR: It is necessary that you seize immediately and bring into port for trial the brig, (formerly the Paz,) now Patriota, or by whatever other name known, commanded by Stafford, and also, if in your power, the brig Patriota, (formerly the Fourth of July,) commanded by Thomas Taylor, or by whosoever else appears as captain or commander. It never was contemplated that any time should be given the vessel you were sent after, except to determine to enter or depart from the limits

[1] Maryland is comprehended in one law-district. Of course all offenses committed therein are to be tried in Baltimore.

of the United States, according to the character she might bear of a merchantman or cruiser. You must make the attempt to seize
[68] these vessels at any rate, and if resistance is apprehended, *call on the officer of the Army, Navy, or militia of the United States, as has been already directed in such cases. You have the law on your side, and must proceed decisively, fearing nothing, though acting with prudence and moderation.

A vessel of the United States Navy, it is expected, will be in readiness to join you in a day or two, as requisition has been made for that purpose. But do not wait unless deterred by a greater force and opposition.

I am, hastily, your obedient servant,

JAMES H. McCULLOCH.

Captain ALEXANDER BEARD.

Mr. Ingersoll, district attorney, to Mr. Adams, Secretary of State.

PHILADELPHIA, *November* 14, 1817.

SIR: I have the honor to acknowledge the receipt of your letter, dated the — instant, and will endeavor in the course of a day or two to report a statement of the circumstances of the arrest and detention of the British officers now in confinement here.

In the meanwhile I beg leave to lay before the President the inclosed copy of a note presented to me yesterday respecting the brig Ellen and her cargo, now under seizure.

[69] Every measure being in proper train for *complying with the views of the Spanish minister, I respectfully submit to the President's consideration and decision the propriety of releasing this vessel and cargo from seizure and further prosecution, on condition of a discharge of the munitions of war on board of her, and giving sufficient security that her future destination shall be according to law.

I remain, &c.,

C. J. INGERSOLL.

Mr. ADAMS,
Secretary of State.

Mr. Kenguemt, Spanish consul, (?) to Mr. Ingersoll, district attorney.

PHILADELPHIA, *November* 13, 1817.

SIR: I have the honor to inform you that I have received an official communication from his excellency Don Louis de Onis, His Catholic Majesty's minister plenipotentiary and envoy extraordinary near the United States, relative to the proceedings instituted against the brig Ellen and her cargo. As the information which gave rise to the proceedings was derived through the medium of persons connected with His Majesty's legation, the Chevalier de Onis has directed me to state to you in his name that whenever the munitions of war are discharged from the vessel to which I have referred, and sufficient security is given that her future destination shall be conformable to law, and the ami-
[70] cable relations that happily *subsist between the United States and His Catholic Majesty, it will afford him great satisfaction that the

owners should not be exposed to any further inconvenience. You will readily perceive the reasons which influence his excellency on this occasion, and that while, on the one hand, it is equally his inclination and duty to guard against attempts alike injurious to the government of his sovereign and the neutrality of the nation, near to which he is accredited, he has no desire to cause inconvenience or loss to any individual, and least of all to the merchants of Philadelphia, who have, in general, scrupulously abstained from these expeditions. You will be pleased to observe that this communication has no reference whatever to the officers who are in custody for a violation of the laws of the United States.

I have the honor to remain, &c.,

B. XENGUEMT.

CHARLES INGERSOLL, Esq.

Mr. Adams, Secretary of State, to Mr. Ingersoll, district attorney.

DEPARTMENT OF STATE,
November —, 1817.

SIR: Your letter of the 14th of this month has been received, inclosing the copy of one addressed to you in behalf of the Spanish minister which states that as soon as the munitions of war are discharged from the brig Ellen, now under seizure at Philadelphia, and sufficient security is given that her future destination shall be conformable with law, there will be no objection upon his part to the release of this vessel, and I am instructed by the President to communicate to you his assent to that measure upon the condition referred to.

JOHN QUINCY ADAMS.

CHARLES J. INGERSOLL,
United States Attorney for Pennsylvania district.

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[71] **Mr. Ingersoll, district attorney, to Mr. Adams, Secretary of State.*

PHILADELPHIA, *November* 15, 1817.

SIR: I have the honor now to report to your Department a statement of the circumstances of the arrest and detention of several British officers in confinement at Philadelphia.

On the 27th of October, the Spanish consul brought to my office Mr. John Williams, a British subject, who, the same day, made affidavit before a magistrate that the brig Ellen, laden with a great quantity of ready-made clothing, together with arms, accouterments, appointments and equipments complete for one or more regiments of cavalry, for the revolutionary army in South America, had dropped down the river Delaware from the port of Philadelphia that day, for the purpose of sailing on the said warlike expedition; that Colonel Needham, Captain Perkins, Captain Farrier, Captain Holland, Surgeon Fry, Lieutenant George Stacey, Lieutenant Richard Stacey, Lieutenant Beaix, Lieutenant Webster, and Lieutenant Clarkes were, either on board of the Ellen or attached to her, about to depart on the said warlike expedition; that the said persons had, within the limits of the United States, been knowingly concerned in the furnishing and fitting out the said brig Ellen, with intent to aid and co-operate in warlike measures, in the service of cer-

[72] tain foreign states, colonies, and people, to wit, some *one or more of the revolted colonies of Mexico or South America, against the subjects of a state with whom the United States are at peace, to wit, Spain; and that the said persons then held commissions from some foreign government or persons, for the purpose of enabling them to wage war against Spain, and that the said persons had, within the territory and jurisdiction of the United States, been knowingly concerned in adding to the equipment, solely applicable to war, of the said brig Ellen.

This affidavit, you will perceive, sir, implicated the accused in charge of having violated—

1. The third section of the act of Congress, dated the 5th of June, 1794, entitled "An act in addition to the act for the punishment of certain crimes against the United States."

2. The fifth section of the same act of Congress.

3. The first section of the act of Congress, dated the 3d of March, 1817, entitled "An act more effectually to preserve the neutral relations of the United States."

On this affidavit the magistrate issued his warrant in the afternoon of the 27th ultimo. All the accused were apprehended that evening, except Mr. Farrier, who escaped by flight from the pursuit of the [73] marshal and his deputies, to *whom the service of the process was intrusted. Mr. Farrier was afterward taken, on the 29th of the month. The others enjoyed the legal opportunity of a full examination of Mr. Williams, and also another witness against them, Mr. Peter Hogan, another of their military comrades, then for the first time appearing, with both of whom the officers were confronted in the magistrate's office during a thorough investigation of the causes of the proceeding. The result was his satisfaction in these causes, and their commitment to prison, as they declared their inability to give bail.

On the morning of the 29th of October, having in the interim procured counsel, as I understood, through the agency of the British consul, they applied, by petition to the circuit court of the United States for this district, then in session, for a writ of *habeas corpus*, which was immediately awarded, and made returnable the same afternoon, that being the time fixed by the counsel of the applicants. At the time thus appointed the regular business of the court was suspended for two days, during which the causes of commitment were elaborately inquired into, a great many witnesses examined on both sides, and the case deliberately discussed and considered.

[74] *It appeared in evidence that the accused had openly embodied themselves, together with Messrs. Williams and Hogan, in the course of the last summer, at Brussels, as officers of a cavalry regiment to be employed in the service of the revolutionists of South America; that, not finding a direct conveyance from Antwerp, where they embarked, to any place in the neighborhood of the headquarters of General Bolivar, they sailed on board an American vessel for the United States, in order to proceed from here to the scene of warlike action; that they brought with them, each man, a complete cavalry equipment; that they continued, in the original organization of their expedition, united in a military band in this country, and this city, where they were drilled every day, at the colonel's quarters, in military discipline; that Colonel Needham had re-enlisted Mr. Hogan in this country to serve in his regiment in South America; and that their passages were all taken and paid for, or engaged to be paid for, on board of the brig Ellen, whose owners contracted to supply them with stores, and had constructed temporary berths for their accommodation during the voy-

age; that the brig Ellen was clandestinely loaded with large
[75] quantities of gunpowder, muskets, pistols, *cannon-balls and shot, military clothing, drums and trumpets, and with a disguised manifest cleared out, ostensibly for Surinam, but really for La Guayra, should it be found in the possession of the revolutionists.

It further appeared in evidence that, while on board of the American vessel in which the accused came from Antwerp to New London, several of them, if not all, had been guilty o what our law denominates revolt on the high seas and confinement of the master of the vessel in which they were passengers.

Thus, besides the three specific charges disclosed by the affidavit on which their commitment was founded, it appeared that they were liable to indictment for—

1. A violation of the second section of the act of Congress before mentioned, dated the 5th of June, 1794.

2. A violation of the eighth section of the act of Congress dated the 30th of April, 1790, entitled an "Act for the punishment of certain crimes against the United States."

3. A violation of the twelfth section of the last-mentioned act of Congress.

After hearing all that could be said by eminent counsel in their
[76] behalf, the court *pronounced its opinion that there was cause for the commitment, and ordered the petitioners to be remanded to prison unless they gave bail, each one in the sum of $3,000, for appearance at the time of trial.

Not having been able to afford this bail, as I suppose, they have since remained in confinement. Their treatment in custody and at all times and in all things since their arrest, I have reason to believe has been marked by the liberality and indulgences which characterize the institutions and officers of this country to men in such situations, and, adverting to the severe pecuniary penalties in addition to the personal punishments with which the different sections of the violated laws are armed against the misdemeanors in question, you will not fail to observe that the bail was fixed by the court at the most moderate amount.

The President may rest assured, sir, that nothing has been or will be omitted to alleviate their predicament. Their custody is as liberal as is compatible with their detention for trial.

It happened quite unfortunately for them, as respects the period
[77] of their imprisonment, *that the grand jury was discharged a day or two before the arrest of these persons, who would, otherwise, have been put on their trial immediately. But a special court for that particular purpose has been ordered for the 15th of December, instead of the 11th of April, when the stated session will be held; and I am informed that this unusual act of accommodation to prisoners has not been found consistent with the multifarious business of the court for the last fifteen years, nor can it now be granted without both public and private inconvenience.

There are considerations of the gravest character connected with the proposed special session which may, perhaps, prevent its taking place. The circuit judge cannot attend it by reason of his indispensable engagements elsewhere as a member of the supreme court, and it is questionable whether the district judge has authority to hold a circuit court alone. It would not be proper hastily to expose the jurisdiction of this important court to such a disparagement, if it is really to be apprehended. It would answer the ends of the prisoners as little as it would those of the general administration of justice, thus to draw its permanent useful-

[78] ness into question and controversy,* for the sake of indulging prisoners, whose case is not harder than that of most others, (particularly the needy and unprotected,) with an extraordinary trial. But the judge whose respect for his station and his duty suggests to him these anticipations, as animated on this as on all occasions, with the best disposition to administer justice with the mercy of promptitude; and he will, no doubt, undertake alone the laborious and responsible functions of the special session, unless, in his deliberate judgment, there should be satisfactory reasons for referring this case, like all others that have been tried in this district for the last fifteen years, to the regular and stated session of the court, constituted as heretofore.

I have the honor to remain, sir, with great consideration, your obedient servant,

C. J. INGERSOLL.

Hon. JOHN QUINCY ADAMS,
Secretary of the Department of State.

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[79] * *Mr. Adams, Secretary of State, to district attorneys.*

[Circular.]

DEPARTMENT OF STATE,
December 13, 1817.

SIR: I have to request you to transmit to this Department, at as early a day as you may find convenient, a statement of every case in which you have, since the last session of Congress, instituted a process before the courts of the United States, for the execution of the laws to enforce a due observance of the neutral obligations of the United States in the contest between Spain and the American Provinces, claimed by her as colonies; specifying those in which you have proceeded in consequence of applications from the Spanish consuls, together with the decisions of the courts in the cases upon which any decision has been had.

JOHN QUINCY ADAMS.

UNITED STATES DISTRICT ATTORNEYS
At New Orleans, Georgia, Charleston, South Carolina, Baltimore, Philadelphia, New York, Boston, Portsmouth, and Rhode Island.

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[80] **Mr. Robbins, district attorney, to Mr. Adams, Secretary of State.*

NEWPORT, RHODE ISLAND,
District Attorney's Office, December 23, 1817.

SIR: I have just received your letter of the 13th instant, and hasten to communicate the information therein requested.

In July last, a Spanish ship called the St. Romans, and prize to a Buenos Ayres privateer, was found within the waters of this district, at Block Island, disposing of her cargo by retail to the inhabitants of that island. The ship and cargo, so far as the latter could be, were seized and carried first to the Connecticut district, and thence brought to this district, and have been libeled here as forfeited to the United States, under the act entitled an act to regulate the collection of duties on imports and tonnage, passed the 2d March, 1798.

Mr. Malagamba, the Spanish consul, residing within this district, has also libeled the same property on behalf of the original Spanish owners, and has filed a claim against the libel before mentioned of the
[81] United States. I have also filed a *claim in behalf of the United States against the libel of the Spanish consul. Both cases are still pending in our district court, and stand for trial at the term to be holden the first Tuesday of February next. The laws to preserve the neutral relations of the United States are not at all involved in the ground of the libel of the United States, but some considerations of them, however, may incidentally arise in discussing the Spanish claim. The libel of the Spanish consul will probably be attempted to be enforced on the ground of those laws. As the libels are adverse, it is unnecessary to say that the libel of the United States was not instituted on the application of the Spanish consul.

In September last, a schooner called the B, an American registered vessel, with some armament and 13 men, cleared out from Bristol, in this State, for the West Indies. Some days after, she being found hovering on the coast and augmenting her force, the collector of this port sent the revenue-cutter to seize and bring her in. These orders were executed, and at the request of the collector I libeled the vessel
[82] as forfeited to the United States, under the *act entitled "An act more effectually to preserve the neutral relations of the United States," passed the 3d March, 1817. This libel has been tried, and the property condemned in the district court of this district, but is now pending by appeal in the circuit court, and stands for final trial at the term to be holden the 15th June next, which trial is to be final by agreement of the parties.

I have also, at the request of the collector of this port, preferred an indictment against —— Jones, owner and master of said schooner, under the last-mentioned act, which indictment has been found and continued to the next June term of the circuit court.

The Spanish consul has not moved at all in the business of this libel or indictment to my knowledge or belief.

These cases embrace all the proceedings which have been had in this district since the last session of Congress, involving any question upon the laws made to preserve the neutral relations of the United States.

With the most perfect esteem, I have the honor to be, your obedient servant,

ASHER ROBBINS.

Hon. JOHN QUINCY ADAMS,
Secretary of State, United States.

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[83] **Mr. Davies, district attorney, to Mr. Adams, Secretary of State.*

SAVANNAH, *January* 2, 1818.

SIR: Since the last session of Congress I have, in two instances only, instituted process before the courts of the United States for the execution of the laws to enforce a due observance of the neutral obligations of the United States in the contest between Spain and the American provinces claimed by her as colonies. In both instances the vessels proceeded against were seized and detained by the United States brig Saranac, and I acted on the information of her commander, Mr. H. Elton, having in no instance had any application made to me on this subject by a Spanish consul.

The first was the case of the schooner Iris. This vessel, it appeared, was formerly called the Astulla, sailing under Spanish colors, and was captured on a voyage from or to the coast of Africa, by a privateer under Mexican colors. She was afterward seized and detained by one of the United States vessels of war and sent into the Port of New Orleans, where she was libeled in behalf of her Spanish owners, and restitution claimed on the ground that the Mexican privateer by which she had been captured had been equipped in the port of New Orleans. Pending the proceedings she was sold in virtue of an
[84] *interlocutory decree of the court of admiralty, and was purchased by a Mr. Duplessis, who afterward disposed of a moiety of her to a Mr. Duncan. At the time she was sent into New Orleans she had two large guns mounted on her quarter-deck, besides a quantity of powder and provisions on board, consisting of pork, flour, &c. At the time she was seized by the Saranac there were found on board, concealed in the hold, twelve or fourteen more large guns, which most of the witnesses, examined on the part of the claimant, testified were on board at the time she was sent into New Orleans; but they were not mentioned in the inventory delivered by the marshal to the purchaser, Mr. Duplessis. The other articles were mentioned, viz, the two mounted guns, the powder, and the provisions. After the purchase by Mr. Duplessis, the vessel underwent some trifling repairs and sailed from New Orleans, bound ostensibly for St. Mary's; but it was admitted by Mr. Duplessis that his intention was to go to Amelia, if on his arrival off that place it should have been found in the possession of the "patriots." On the arrival of the vessel at the port of Funandisa, that place was in possession of General McGregor, and she was taken by the Saranac when going into that port. At the time of her sailing from New
[85] Orleans she had on board *the owner, Mr. Duplessis, the captain, and ten men before the mast, besides four other persons who were called passengers. The acting captain at the time they left New Orleans testified on the trial that he had understood from these four men that they held commissions in the "patriot" service, and were going to Amelia to be employed. One of them acted as mate during the voyage, and one other testified that before the vessel sailed it was agreed between Duplessis and himself that he should have the command as soon as they were at sea; that he did accordingly take the command a short time after sailing; and that he would have taken the command at New Orleans, but, holding a commission in the patriot service and disclaiming to be an American citizen, he could not clear the vessel. This man also testified that it was understood between Duplessis and himself that he should become the purchaser of the vessel on her arrival at Amelia or St. Mary's, and Duplessis alleged in his answer that it was his intention to make sale of her on his arrival at either of these places. The log-book was very imperfect, containing the occurrences of but a part of the voyage. On one day, according to the log-book, a vessel was discovered and all sail was made in
[86] chase; this latter remark was obliterated, *and all the witnesses swore that no such circumstance occurred, but that, on the contrary, they avoided all vessels that they could during the voyage. The libel against the vessel was founded upon the act of March, 1817. She was acquitted before the district court, but condemned before the circuit court.

The other is the case of the Hornet. This vessel was formerly an American privateer called the Traveller. Some time in the course of the past year she was fitted and equipped as a privateer in the Delaware.

Her men, (according to the testimony,) together with her equipments, were shipped and procured at Philadelphia, and sent down to the vessel in oyster-boats and other small craft. Four or five days after sailing the name Traveller was obliterated and she assumed the name of Hornet and hoisted the colors of Sir George McGregor, and commenced her cruise. During the cruise the men mutinied, and, while in this state, the vessel was taken possession of by Captain Elton, on the St. Mary's station, and sent in. There was a condemnation before the district court, and an appeal was taken to the circuit court, where it is still pending.

[87] *Perhaps a particular statement of the facts in relation to these cases was not required from me, but being in doubt on this subject I have given them according to the best information which I have been enabled to acquire, from the testimony collected and offered to the courts before which the cases have been heard.

I am, yours, &c., &c.,

WILLIAM DAVIES.

Hon. JOHN QUINCY ADAMS,
Secretary of State.

Mr. McCulloch, collector, to Captain Beard.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, April 22, 1818.

SIR: The brig you speak of as a Spanish vessel, prize to a Buenos Ayrean vessel of war, may come up and enter as a merchantman, if in need of any supplies for the crew or repairs to enable the vessel to navigate safely, but an officer must be put on board to prevent anything being landed until she is ready to depart from the United States.

An inspector of the customs will perform this duty, and go down for the purpose.

JAMES H. McCULLOCH.

Captain ALEXANDER BEARD.

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[88] **United States Neutrality Act of April* 20, 1818.

[This act is already printed in the United States Documents, Vol. IV, p. 90.]

Mr. Monroe, Secretary of State, to Mr. Fish, district attorney.

DEPARTMENT OF STATE,
July 20, 1818.

SIR: The Chevalier de Onis has represented to this department that the owners of the American privateer, the True-Blooded Yankee, are fitting her out in New York to cruise off the harbor of Cadiz, in Spain, under the flag of the government of Buenos Ayres, with a view to the capture of the vessels of his sovereign and of the subjects of the Crown of Spain. You will lose no time in setting on foot the necessary inquiry in relation to the facts alleged by the Chevalier de Onis, and in taking

the proper measures to frustrate the plan of the adventurers, if his information is found to be correct. You will likewise in this case institute the proper legal remedies for the punishment of this violation of the law, and make a statement to this Department of the result of your inquiries and of the steps you shall have taken.

JAMES MONROE.

JONATHAN FISH, Esq.

Mr. Wirt, Attorney-General, to the President.

OFFICE OF THE ATTORNEY-GENERAL
OF THE UNITED STATES,
[89] **September* 10, 1818.

SIR: The cause of the Corony, Captain Saunders, seized at Savannah, on a charge of having been fitted out in a port of the United States to cruise against the King of Spain, with whom we are at peace, has been submitted by the Secretary of State for my opinion, and, in his absence, I take the liberty of communicating the opinion directly to you.

Captain Saunders applies for an order to discharge his vessel from further prosecution, on the ground that she is a legitimate armed vessel, lawfully sailing under the flag of the republic of Venezuela, and regularly commissioned by Admiral Brion. Although both the statement and the documents furnished by Captain Saunders are entirely *ex parte*, yet, from his own showing, I consider it a fair case for adjudication; for in his letter to the Secretary of State he admits that the Corony is the same vessel which, on the 1st day of April last, cleared out from the custom-house at Savannah, with the munitions of war then on board with which she was apprehended; and by reference to the manifest which he incloses in his letter in support, it is presumed, of this assertion, it will be found that she *then* cleared out under the name of the *Felix*, having on board three cases of muskets, two four-pound and two six-pound cannon with carriages, sixteen kegs of powder,
[90] and no other cargo except *sea-stores; and he admits that, thus armed, she took a commission to cruise against the subjects of the King of Spain, and did sail upon such cruise. At this time the act to prevent citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States, and the act passed the 3d of March, 1817, "more effectually to preserve the neutral relations of the United States," were both in force, the provisions of which are familiar to you; and I, therefore, think it unnecessary to say more than that, in my opinion, the case of the Corony is a fit case for adjudication, and by no means one which calls for the extraordinary interference of the Government.

To enable you the more readily to test the accuracy of this opinion by the facts communicated by Captain Saunders, I inclose his letter to the Secretary of State, with the documents which that letter covered.

I have the honor to be, &c.,

WM. WIRT.

The PRESIDENT *of the United States.*

[Inclosure.]

Captain Saunders to Mr. Adams, Secretary of State.

SAVANNAH, *July*, 1818.

SIR: I pray you to lay before his Excellency the President of the United States the inclosed documents. I submit the case of the
[91] Corony to his consideration *under the belief that it is a proper subject for the interposition of the Government, and that his excellency, under the representations made, will be pleased to direct the United States officer to release the vessel from the present arrest and process. The Corony is regularly commissioned, and has done no act since that period that could upon any ground support a libel against her in an admiralty court of the United States, unless it is determined to doubt the authority to cruise under the flag and commission of Venezuela. This vessel has sailed in company with the United States vessel, the Hornet, and until the seizure under the vague and unsupported allegation of being fitted out and armed within the limits of the United States, her flag and commission have been respected wherever she has been. A reference to the custom-house of this district will show that she was permitted to sail from this port with the munitions then on board; that she had no guns mounted or was in a state or condition to commit hostilities. She received her armament and commission at Margaritta, and sailed in the full confidence (particularly as she brought dispatches from Captain Reid to this Government) of not being molested in the United States. The Corony is now in possession of the marshal, and with this expense is incurred the very serious one
[92] *of supporting the crew until some decision is obtained from the court or the Government. There is no acting district judge, and consequently I am compelled to wait for the judgment of the court, which may not be expected before December, the period assigned for the session of the circuit court. Unless, then, it is in the power of the President to afford me the relief solicited, the vessel and her armament will be abandoned, and redress sought for against the arresting officer.

I have the honor to be, &c.,

WM. SAUNDERS.

Hon. J. Q. ADAMS,
Secretary of State.

Inclosures: Manifest of schooner Felix, (copy;) protest and affidavits of W. S., (copy;) commission and instructions of W. S., (copy.)

Mr. Wirt, Attorney-General, to Mr. Glenn, district attorney.

WASHINGTON, *October* 12, 1818.

DEAR SIR: I find on my table this morning yours of the 9th instant. Whether I can take part in the prosecutions will depend on the case you shall be able to make by your evidence. The Government is sincerely and earnestly desirous to fulfill the pledge of neutrality as to the South American contest, which it has given to the world, and if
[93] it shall appear that our citizens have interfered *in this contest in violation of existing laws, you may rely upon my professional assistance. But I must know what the proof will be before I can

engage, and this same knowledge you will readily perceive is necessary before I can express any opinion as to the mode of indicting.

You will be so good, therefore, as to furnish me copies of any information you may receive which brings the case under either of the laws, in order that I may give you the aid you require; and in the mean time it may not be amiss to state to the Secretary of State your wish for my assistance.

Yours, with great respect, &c.,

WM. WIRT,
Attorney-General.

ELIAS GLENN, Esq.,
Baltimore.

Mr. Glenn, district attorney, to Mr. Adams, Secretary of State.

BALTIMORE, *October*, 1818.

SIR: Warrants have been issued by the district judge of Maryland against several men of some standing in society for having, in the year 1816, been concerned in fitting out a privateer called the Fourth of July, alias the Fortuna, with intent to employ such vessel in the service of Buenos Ayres and of Artigas, to commit hostilities upon
[94] *the subjects of the Kings of Spain and Portugal. Upon these warrants the parties charged have been arrested and recognized to appear on the 7th of November next, when the subject will be presented to the grand jury, when I presume indictments will be found. Upon these indictments the parties charged will be tried.

As the trial will involve many important questions, which will readily present themselves to your mind, I take the liberty of asking the favor of you to permit me to employ Mr. Wirt to assist me in the prosecutions if he will consent to lend his aid.

Will you be pleased to communicate with the Attorney-General on this subject, and let me have the pleasure of hearing from you on this subject?

I have the honor to be, &c.,

ELIAS GLENN.

JOHN QUINCY ADAMS, Esq.

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[95] **Mr. Swift, Portuguese consul, to Mr. McCulloch, collector.*

VICE-CONSULATE OF PORTUGAL,
Baltimore, October 29, 1818.

SIR: I beg leave to call your attention to the affidavit that I have the honor to inclose. I would further inform you that from my own knowledge the commander of the armed brig alluded to arrived here this morning preparatory to his departure for a cruise on which I learn he intends to proceed immediately, which is confirmed by a communication I have received from one of his officers.

Under these circumstances I have to respectfully request you will, by virtue of the power invested in you, cause the said armed vessel to be detained forthwith, until at least the pleasure of the President of the United States can be known.

I make this appeal in great confidence, from my knowledge of your

disposition for justice, and that with every good citizen you will unite in showing your disapprobation of acts fraught with so much evil and injustice, which are so likely to entail disgrace on our city, and to disturb that tranquillity which our country now happily enjoys.

I have the honor to assure you of the great respect and consideration with which I am, sir, yours, &c., &c.,

W. B. SWIFT.

JAMES H. McCULLOCH, Esq.,
Collector of the Customs, Baltimore.

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[96] *BALTIMORE, *ss:*

On this 29th day of October, 1818, personally appeared before me, the subscriber, a justice of the peace for the county aforesaid, John M. Guss, who made oath on the Holy Evangels of Almighty God that he has every reason to believe, and is confident in his own mind, that a certain brig or vessel formerly called the Iowa Lento, and captured under the Portuguese flag by the private armed brig La Fortuna, under a commission from Artizas, is now fitting or fitted in the Chesapeake Bay (and at present in or near Patuxent) for the purpose of cruising against the commerce of nations in amity with the United States, and that part of said equipment has been furnished at or from the neighborhood of Baltimore.

Sworn to before

AUG. FISQUITH.

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[97] **Mr. McCulloch, collector, to Captain Beard.*

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, October 29, 1818.

SIR: Information having been given to me that a certain brig or vessel formerly called John Lunt, captured from the Portuguese by the oriental brig of war La Fortuna, is now arming and fitting for hostile purposes against nations in amity with the United States, at or near Patuxent River in this bay, and is furnished with part of her equipments from Baltimore, or some place near it, you will please to proceed with the cutter Active and examine the places in that quarter or elsewhere. And if such vessel so acting and fitting is found without legal entry and permit therefor, seize and bring her to this port for adjudication.

If in possession of any of the officers of the United States, your object is answered, and nothing will remain but to give any assistance required to secure the vessel.

Your obedient servant,

JAMES H. McCULLOCH,
Collector.

Captain ALEXANDER BEARD.

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[98] **Mr. Wirt, Attorney-General, to Mr. Glenn, district attorney.*

DEPARTMENT OF JUSTICE,
Washington, November 6, 1818.

DEAR SIR: I have been deliberating as well as I could on the course of prosecution which shall be adopted against the owners, captain, and

crew of the Fourth of July, privateer, and according to the request contained in your first letter, will now give you my opinion on that course.

First. I would indict the captain and crew as pirates under the original act of Congress which defines piracy. The prisoners will defend themselves under the commission of Artigas. I would object to that commission going before the jury as evidence, on the ground that it is not the commission of a sovereign recognized by our Government.

In the case of the Roruss, in Richmond, the chief justice decided that a maritime commission signed by the sovereign authority of the province of La Plata furnished no justification to the crew of that vessel, because the court could not take notice of La Plata, as a sovereignty, until recognized by our Government, and, consequently, could not take notice of a commission purporting to be issued under the separate authority of that province. That in view of the court La Plata must be considered as a dependence of the Spanish Crown, until its separate exist-
[99] ence as a nation *had been acknowledged by the executive branch of the Government.

In reply to this they will quote the decision of the Supreme Court in the case of Palmer, (2 Wheaton, 634–5,) and they will insist on the correspondence between Mr. Monroe, when Secretary of State, with Don Onis, as well as the President's message at the opening of the last session of Congress to prove the admission of the Government that the South American colonies are to be considered as in a state of *civil war*.

On this limited recognition they will claim for Artigas the rights laid down in Palmer's case *qua supra*, that is *all the rights which war authorizes*, and they will insist, under that opinion, "That persons and vessels employed in the service of the self-created governments must be permitted to prove the fact of their being actually employed in such service, by the same testimony; which would be sufficient to prove that such vessel or person was employed in the service of an *acknowledged state*." That although under that opinion "the seal of such unacknowledged government cannot be admitted to prove itself," yet that it may be proved by such testimony as the nature of the case admits, and that "the fact that such vessel or person is so employed may be
[100] proved without *producing the seal."

To this there are two answers:

1. That the correspondence with Don Onis and the message are not pointed at Artigas. They are to be considered in reference to the subject-matter which alluded to a complaint of the Spanish minister touching the admission of *Buenos Ayrean* privateers into our ports. The section of country which Artigas holds is claimed by Portugal. His war is with the King of Portugal. The system of colonial government adopted by the two monarchs is alleged to be very different—that of Spain oppressive to the colonists in an extreme degree; that of Portugal comparatively liberal. According to the writers on the laws of nations, the course which a neutral holds in such wars is often directed by its sense of the justice of one side of the cause or the other, and according to this sense it relaxes at pleasure the rigor of its neutrality, still, however, keeping within the neutral pale. According to these writers, a recognition of the independence of a revolted colony by a neutral is no cause of war to the parent nation, provided the revolted colony be in actual and exclusive possession of its territory and
[101] government. According *to these principles our Government might recognize the government of Buenos Ayres without giving just cause of war to Spain; but if the Bande Orientale, as Portugal

contends, is a separate territory belonging to a distinct sovereign, such recognition of Buenos Ayres would not extend to *that*, because the American Government may perceive a justice in the one conflict which it does not in the other.

On the same principle the recognition of a civil war in Buenos Ayres, a Spanish colony, would not by any means carry along with it as a consequence the recognition of a civil war in a Portuguese colony.

You will not understand me as speaking in the name of the Government of the United States as to its seeing any difference in fact between the cases of Puerrydon and Artigas.

I have no authority for making any such declaration. I speak only of the inference of fact which may or may not be fairly deduced from the correspondence and message in question. Those who rely upon them as establishing the admission that civil war exists between Artigas and Portugal must show that admission in the face of those documents, and cannot, for the reasons I have given, infer, argumentatively,
[102] by *reasoning from the one case to the other.

If the prisoners fail in showing that our Government had admitted the existence of a civil war between Artigas and Portugal, then the principles laid down in Palmer's case, *qua supra*, can have no application to the case at bar, and this case will revert to the principles established by the Chief Justice in the case of the Roruss.

2. But suppose it to be taken as admitted by the Government that a civil war does exist between Artigas and Portugal, does it follow that the citizens of the United States may participate in that war?

The Supreme Court have not so said. Palmer was not expressly indicted as a citizen of the United States, nor is the vessel charged as being United States property, and the principles laid down by the court are to be taken *secundum rem judicata*, and not to be extended to a different case.

If the Bande Orientale is to be considered as part of the province of La Plata, and, consequently, as belonging to Spain, the fourteenth article of our treaty with Spain makes the case at bar a case of piracy, (see that article;) and whatever rights of war Artigas may have
[103] on the ground of his being engaged *in a civil war, the citizens of the United States cannot mingle in that war on this hypothesis without being guilty of piracy. (See what Vattel says, Book 3, chapter 2, section 15, as to enlisting troops in a foreign nation.)

As a branch of this opinion the owners, &c., ought to be indicted as accessories to the piracy under the ninth and tenth sections of the act of 1790, "An act for the punishment of certain crimes against the United States."

I would indict them under the act of 1794, "An act in addition to the act for the punishment of certain crimes against the United States," laying a separate count under every section where the facts will warrant it. The defense here will be that Artigas is neither *a foreign prince*, nor his province *a state*, according to the decision in Gelston *vs.* Hoyt. But as the previous prosecution for piracy can fail only on the ground *that he is a prince and his government that of a state*, (under the decision in Palmer's case and by our Government's recognition of a civil war,) the prisoners will have taken this ground from under themselves.

[104] Artigas and his province are *either a foreign * prince and state*, or they are not. *If they are*, the indictment will be under the act of 1794; *if they are not*, the indictment for piracy will be under the act of 1790.

There seems to be no probability of escaping this dilemma but by splitting the hair and saying they are *so far* a foreign prince or state as to excuse the prisoners from the piracy, but yet not *so far* as to subject them under the act of 1794.

In the case of Gelston and Hoyt the alleged princes and states were Petion and Christophe, and the different parts are St. Domingo.

Our Government had never acknowledged these sovereignties—not even by the recognition of a civil war either between themselves or their parent countries.

So that inference can be drawn from that case to this, if the court shall have previously excused the piracy on the ground of our recognition of a civil war.

This simple recognition in Palmer's case was considered and decided as placing the belligerent on the same footing for the purposes of war as if they had both been regularly recognized sovereigns, an effect
[105] which would certainly bring the act of '94 to bear directly on *the case.

3. I would indict them under the act of 1817. As to facts under this act you have, I understand, only a single witness; but that there is in expectation a further proof.

The grand jury, I presume, would not hesitate to find a bill on the testimony of this single witness; and if you think it unsafe to go into the trial on the evidence of this single witness, the court would, I presume, indulge you in a continuance until the next term.

WM. WIRT.

I have not as yet received any direction from the President to attend these trials. I will see him to-morrow on the subject and write you again.

ELIAS GLENN,
District Attorney for the United States, Baltimore.

Mr. Wirt, Attorney-General, to Mr. Glenn, district attorney.

WASHINGTON, *November* 9, 1818.

DEAR SIR: I have seen and consulted with the President on the subject of your wish, that I would go on to Baltimore to aid in the prosecution of the crew of the Fourth July, and am instructed by him to state that his confidence in your zeal and ability in giving
[106] *effect to the laws of the Union renders the measure wholly unnecessary.

In my letter of the 6th instant I took the liberty to give you very fully my views of the case, in compliance with a request in one of your former letters.

You will understand me, however, as not presuming to prescribe your course, but merely as offering for your adoption or rejection the suggestions which struck me at the moment as belonging to the case.

I am, yours, &c., &c.,

WM. WIRT.

ELIAS GLENN, Esq.,
Baltimore.

Mr. Swift, Portuguese consul, to Mr. McCulloch, collector.

VICE-CONSULATE OF PORTUGAL,
Baltimore, December 16, 1818.

SIR: I am necessitated, in my official capacity, to once more intrude upon your time and attention. The schooner Alerta, or Alerto, said to be under the flag and commission of General Artigas, is now in this district receiving her crew on board preparatory to a cruise. Ample testimony has been furnished the grand jury recently in session, and which can be still had, that the above-named vessel received the
[107] *commission of Artigas at sea from an officer of the private armed brig La Fortuna, for the purpose of cruising against the commerce of the King of Portugal, since which period she has arrived and completely refitted at this point as a vessel of war, and so manifest is the views of those concerned with her, that I am necessitated, in a faithful discharge of the duties of my office, to request you, sir, to have the said vessel forthwith detained until the pleasure of the President of the United States can be known on the subject.

With great personal regard, I am, &c.,

W. R. SWIFT.

JAS. H. MCCULLOCH, Esq.,
Collector of Customs, Baltimore.

Mr. McCulloch, collector, to Captain Beard.

COLLECTOR'S OFFICE, BALTIMORE,
December 17, 1818.

SIR: Information has been verbally delivered here that a vessel called the Alerta has departed from this port and gone down the river without a certificate or permit of any kind. The same vessel has been reported to me by the consul of Portugal as intended to be armed and to cruise against the commerce of that kingdom. You will therefore immediately proceed to the place where she lies and take possession of her and detain her until an investigation can be had. Demand if they have any papers in the first instance, and take whatever they produce, returning them to this office. You will please to note, particularly, whether she is armed, if any cargo is on board, what it is, what number of men, who are the officers, &c.

Your obedient servant,

J. H. McCULLOCH,
Collector.

Captain ALEXANDER BEARD.

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[108]*Mr. Brent, Acting Secretary of State, to Mr. Fish, district attorney.*

DEPARTMENT OF STATE,
February 4, 1819.

SIR: Herewith you will receive the copy of a letter from the district attorney of Maryland, and the original depositions of Joseph Almeda, in the case of George Clark and Joseph Moon, who are charged with having committed piracy and murder on board of a vessel that is said to

have been fitted out at Baltimore and to have assumed the flag of Artigas. You see from the letter of Mr. Glenn that a warrant was issued against these men upon the facts disclosed by this deposition, and that Clark evaded the service of it by his sudden departure from Baltimore for New York in the Hiram, Captain Luther Evans, but that Moon was taken and is now under arrest and in prison at Baltimore. Under these circumstances, it is the President's wish that you lose no time in setting on foot the necessary judicial prosecutions against Clark, and such others concerned in the crimes charged upon him as may be found in
[109] *New York, if the deposition referred to be deemed sufficient authority for his arrest in that district, or you can otherwise obtain the necessary evidence in his case and that of the others.

The copy of a letter from the consul of the United States at the Cape de Verd Islands to this Department in relation to these atrocities is also inclosed; and Captain O. P. Finlay, master of the ship Boston, one of the vessels plundered and robbed by Clark and his party, is now at Alexandria, in this district.

I am, &c.,

D. BRENT.

JONATHAN FISH,
Attorney, United States, &c.

AN ACT to protect the commerce of the United States and punish the crime of piracy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and hereby is, authorized and requested to employ so many of the public armed vessels as, in his judgment, the service may require, with suitable instructions to the commanders thereof, in
[110] protecting the merchant-vessels of the United States and *their crews from piratical aggressions and depredations.

SEC. 2. *And be it further enacted*, That the President of the United States be, and hereby is, authorized to instruct the commanders of the public armed vessels of the United States to subdue, seize, take, and send into any port of the United States, any armed vessel or boat, or any vessel or boat, the crew whereof shall be armed, and which shall have attempted or committed any piratical aggression, search, restraint, depredation, or seizure, upon any vessel of the United States, or of the citizens thereof, or upon any other vessel; and also to retake any vessel of the United States, or its citizens, which may have been unlawfully captured upon the high seas.

SEC. 3. *And be it further enacted*, That the commander and crew of any merchant-vessel of the United States, owned wholly or in part by a citizen thereof, may oppose and defend against any aggression, search, restraint, depredation, or seizure, which shall be attempted upon such vessel, or upon any other vessel owned as aforesaid, by the commander or crew of any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States; and may
[111] subdue and *capture the same; and may also retake any vessel, owned as aforesaid, which may have been captured by the commander or crew of any such armed vessel, and send the same into any port of the United States.

SEC. 4. *And be it further enacted*, That whenever any vessel or boat, from which any piratical aggression, search, restraint, depredation, or

seizure shall have been first attempted or made, shall be captured and brought into any port of the United States, the same shall and may be adjudged and condemned to their use, and that ofthe captors, after due process and trial, in any court having admiralty jurisdiction, and which shall be holden for the district into which such captured vessel shall be brought, and the same court shall thereupon order a sale and distribution thereof accordingly, and at their discretion.

SEC. 5. *And be it further enacted*, That if any person or persons whatsoever shall, on the high seas, commit the crime of piracy, as defined by the law of nations, and such offender or offenders shall afterward be brought into or found in the United States, every such offender or
[112] offenders shall, upon conviction thereof, before the circuit court *of the United States for the district into which he or they may be brought, or in which he or they shall be found, be punished with death.

SEC. 6. *And be it further enacted*, That this act shall be in force until the end of the next session of Congress.

Approved March 3, 1819.

Mr. McCulloch, collector, to Lieutenant Marshall.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, March 26, 1819.

Lieutenant MARSHALL: Please to proceed with the cutter Active down the bay and look for the Buenos Ayrean brig of war Peuyeredon, reported by her commander, Captain Franklin, to this office as being now probably near Patuxent.

You will warn them either to go into port and enter the vessel, or to leave the waters of the United States, as they cannot remain in a situation where the interests of the United States are exposed in more ways than one. Whichever way they determine you will please to keep by them and prevent any vessel from boarding them till they arrive or go out, except the pilot-boat returning with the captain or others
[113] *having permission for the purpose, and especially prevent any vessel if carrying supplies.

I am, sir, your obedient servant,

JAS. H. McCULLOCH.

Mr. McCulloch, collector, to Mr. Crawford, Secretary of the Treasury.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, April 16, 1819.

SIR: On the 14th instant a South American cruiser named Congresso di Venezuela, Don Henreques Chiet, commander, arrived here and reported herself as a government brig of war, bound for the River Aronoque, but put in here in distress, requesting permission to make repairs and take supplies of provisions, water, &c.

It appears by the verbal accounts given me that she was formerly a Spanish brig of war, captured by the Irresistible, a patriot brig, and that at the moment when both were prepared to join in an expedition under Brien and Margueretta the crew of another cruiser there took the

opportunity of the absence of the commander and crew—the latter vessel being on shore with but a small guard on board—to migrate from
[114] their own vessel, substitute themselves to the *crew of the Irresistible, and go off to sea in her. The practice will doubtless correspond on these cruises to this piratical beginning, but the Congresso seems to have sailed in pursuit, and being in need of repairs, &c., has put in here.

The case is reported not only for its singularity and the information of Government, but to show the difficulty the collectors of the customs have at once to gratify the neutrality claimed of the United States by the South Americans, and to restrain their cruisers within proper bounds.

The apology for so much as is here written must be taken from the vexation of hearing complaints, while a consciousness is held of having done everything by watchfulness here and speedy attention to every information from every part of the bay districts with the utmost readiness, in the midst of all our proper business, to give effect to whatever the merchants or attorney of the district can suggest in any case, not by rumors or suppositions, but by embodied information that will disclose the objects and justify the vindictive proceedings.

J. H. McCULLOCH.

Wm. H. Crawford, Esq.

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[115] *Mr. McCulloch, collector, to Lieutenant Marshall.*

Custom-House, Baltimore,
Collector's Office, April 22, 1819.

Sir: Please to proceed with all expedition to Patuxent River or elsewhere down the bay, in search of the vessel said to be a prize to some foreign cruiser. Take possession of her and bring her into port for security to the revenue, and as soon as you have seen her up into this river, return and board privateer if found below. Order her immediately to come to entry in some district or leave the waters of the United States; if they refuse or delay willfully, call for assistance from the militia officers on shore, who are obliged to render it, and any person refusing is liable to a heavy penalty, and notice must be taken of them. If any United States vessel is in the bay at Annapolis or Norfolk apply for their aid to enforce the laws, if you cannot of yourself, but it is trusted that it is only necessary to say this by way of information or instruction, and that resistance will not be offered.

There is now danger of these vessels bringing up goods clandestinely, or of their being smuggled on shore where they lay, and against
[116] both of these mischances you will be *watchful and not suffer any boat to board or leave either vessel without being searched, stopping all goods that may be in passage, permitting only refreshments to go or passengers' baggage to be landed from them.

I am, in haste,

J. H. McCULLOCH.

Lieutenant Marshall.

Mr. McCulloch, collector, to Mr. Crawford, Secretary of Treasury.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, May 3, 1819.

SIR: I beg leave to inclose to you a note received this morning from the attorney of the district, respecting certain vessels therein named of which I can only report that the credible information which he speaks of seems only to be the loose declarations of people who see some things doing on board these vessels, and who neither particularize nor distinguish between the lawful repairs and supplies permitted by our neutral regulations, and the additions and augmentation of force which are prohibited.

The Pucynedon was cleared three days ago and departed, followed by the cutter, with orders to prevent all communication of vessels [117] with her in the bay. At the same time it must *be known that she was closely examined at coming in, when her stores were landed and put under the public keys; her conduct here was attended to and a close examination was made at her departure. She brought in ninety-eight men and went away with seventy, leaving also a gun or two as not wanted, and no change whatever affecting her hostile capacity was otherwise made, as is certified to me by the inspectors. The behavior of the commander and his officers was orderly, nor was complaint heard before. The Nereyda was a Spanish prize, formerl , brig of war, of whose arrival an account was given in my letter of the 16th ultimo; she was in bad condition and needed much repairs for her safe navigation. The commander applied for leave to put a strip of plank about 3 or 4 inches wide and thick, and about 3 or 4 feet in length, under the sliding carriages of his guns, to replace some that were rotten, and to raise the woodwork out of the wash of the water, and as this was thought to apply to carriages only, &c., he was told that he could do so small a piece of work by his own carpenter anywhere, and need not trouble us with it. But he went further; employed a carpen- [118] ter here and changed these same strips in several of the *carriages. Upon a report to the office, he excused himself by saying that his carpenter went on shore, it being impossible to keep the hands on board while in a harbor, and that therefore he paid for the trifling nature of the work; he offered, however, to take away the new and replace the old pieces, which has been since ordered, after some hesitation. In the meanwhile the vessel was libeled and in the hands of the marshal, which seemed to render our attention not so necessary, and makes the call of the district attorney a little unreasonable, perhaps.

The Alerta has been here, I believe, all winter, dismantled, and as reported to me sold to a citizen, who proposes to send her to the West Indies for sale, with a part of her armament and a small cargo, as a mail-carrier between the islands. He has altered her so as to make her much less fit for a cruiser, and there is no doubt that he intends to sell her; still, he will be obliged to give bonds, as he retains some guns, &c.

It does not appear to me in the circumstances that the collector is required to act as the attorney proposes to him, and that the sections of the law he refers to apply to the cases, but as much is said on [119] these sub*jects, and as something may be cast upon the officers of the customs in relief of the law-officers, this matter is submitted to your direction, which I shall be glad to follow.

To exemplify our manner of proceeding with these vessels, an order and return of examination made at the departure of the last privateer

is also inclosed. This, as an official document, if you please, may be returned. A hundred others are at your service if desirable.

J. H. McCULLOCH.

WILLIAM H. CRAWFORD, Esq.

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[120] **Mr. McCulloch, collector, to Lieutenant Marshall.*

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, May 8, 1819.

SIR: Please to get the cutter instantly ready if practicable, and proceed down the bay in search of an armed brig called the Irresistible, of South America. Endeavor to secure her and as many of the crew as practicable, she having been, as reported, piratically carried off and her officers left behind or put out of her afterward. If any difficulty appears from a spirit of resistance, apply to the United States armed vessels for assistance or to the officers of the land forces and militia, at any point most expedient.

You will remember the usual directions to prevent the landing of goods or putting them on board other vessels, and to immediately seize them wherever found.

Inclosed is a blank search-warrant for use, if goods are landed, and in any house, to obtain which you must go before a magistrate and make oath of your information, and then enter no house but in the day-time, without leave of the owner, of which consent some of your own men or disinterested neighbors should be witness.

In haste, &c.,

JAMES H. McCULLOCH.

Lieutenant JOHN MARSHALL.

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[121] **Mr. Adams, Secretary of State, to Mr. Glenn, district attorney.*

DEPARTMENT OF STATE,
May 11, 1819.

SIR: I have received your letter of the 8th instant. Mr. Biscoe, inspector of the customs at Nottingham, will deliver you this letter. He goes to Baltimore in pursuit of the Irresistible, which after having been seized by the officers at Nottingham was taken from them, and is supposed to be at Baltimore.

I beg leave once more to recommend this vessel to your particular attention, and that you will use every legal exertion to bring to justice those who have made her the instrument of their piracies.

I am, &c.,

JOHN Q. ADAMS.

ELIAS GLENN, Esq.

Mr. McCulloch, collector, to Mr. Crawford, Secretary of the Treasury.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, May 14, 1819.

SIR: It is most likely the representations you have received of Captain Child's language respecting the oriental brig La Irresistible, seized

in Patuxent by the surveyor of that district, have been the loose sayings and reports of sayings between him and others, with no very
[122] correct understanding on *either side. Child, who commands the vessel, reported to you on the 16th ultimo. Congressió de Venezuela was employed by Daniels (who had ordered her in expectation of finding the stolen vessel, formerly under his command, in some port of the United States) to go down and assist in getting possession of her. I neither knew this nor gave any authority to Child on the subject. But what was said and written to Daniels may have given some occasion for the reports you mention.

This latter person applied to me on Saturday morning with information of the vessel having arrived somewhere below, and begged to know what should be done in that case. He was informed the cutter would be dispatched to effect every purpose necessary for the objects of our law and government, as he knew the strength of the brig, the temper of the crew, and the weakness of the apparent means in our power here; he offered to go as a volunteer with others on the expedition. This was declined, and the cutter ordered to proceed to execute the business. This vessel, however, was then careening, her given ballast, &c., being taken out, as everything must be, to heave down. Mr. Marshall, the first officer, who continues in command, came up to inform me of this situation, and was directed to take in everything necessary again and
[123] proceed as fast as possible. This *could not be done before midnight or later; and he then departed on Sunday morning as directed. In the mean time Daniels sent me a message, repeating a request that he had before made, that he might send down some of his former crew and officers to attend to the brig; but fearful of some desperate act being perpetrated to destroy her, &c., I sent him a written answer of which a copy is inclosed. He was in too much haste, however, to wait the motion of the cutter, as it appeared, and having hired a vessel sent a number of men, who, finding the brig abandoned, though with notice of the surveyor there, having boarded her, &c., took possession and came out with a deputed inspector from that officer. Another cutter arriving, seized the seamen found on board or in other vessels or ashore, agreeably to my orders, put them in irons, and came up with the brig, never having disposed of the person employed by the officer of Nottingham, nor doing anything more than securing the vessel and prisoners, noticing Child and his men no other ways, as far as I am informed, than by letting them assist to bring the brig into port. As he had but six men, I think, and near twenty prisoners, he could do no more.

I must beg leave to say, sir, that a great deal of foolish, false
[124] story is every now and then *put in circulation, and not a little of pitiful self-interest among our citizens, as well as malignant disposition with others, is manifested in occasional ravings on the subject of South American cruisers. But be assured, sir, the officers of the customs here will never give a real ground for such allegations as you have heard. They feel themselves bound to follow the same equal course which the spirit of our laws and the conduct of the Government manifest is to be observed toward the vessels of the warring parties. It is not very likely, while each requires too much, that we shall satisfy either. But the officers here in their place will not swerve from their duty to shun their disapprobation.

Yours, &c.,

J. H. McCULLOCH.

WILLIAM CRAWFORD, Esq.

[125] *Mr. Glenn, district attorney, to Mr. McCulloch, collector.*

BALTIMORE, *May* 21, 1819.

SIR: I have received information from Mr. Benabran, the Spanish consul, that the vessel called, now, the Louisa Casares, but formerly called the Arrogante Barcelone, is actually fitting out as a privateer, by Almuda or others, to cruise upon the high seas against the subjects or property of the King of Spain or some other foreign government with which the United States is at peace. As too much of this business has already been carried on in this city, I pray you to make your inspectors furnish me with information of the state of this vessel before she is suffered to clear out, in order that I may, if the facts will justify me, file information against her.

Yours, very respectfully,

ELIAS GLENN.

JAMES H. MCCULLOCH, Esq.,
Collector.

Mr. McCulloch, collector, to Mr. Glenn, district attorney.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, May 22, 1819.

SIR: In answer to your note of yesterday's date, received this morning, respecting the Spanish consul's information against the Louisa Caseres, it is proper to advise you that this vessel has been under
[126] the constant inspection of an officer ever since she began *to take in. She came here as an armed merchantman, regularly cleared according to the forms of the Spanish authorities, from Marguerita, landed a cargo and is now prepared to sail with the same individual armament she brought in. If you know of anything in this proceeding forbidden by our laws, I shall be glad to be informed of it that my mistakes may be corrected.

Every information you need shall be furnished, at your own request, from this office.

Yours, very respectfully,

J. H. MCCULLOCH.

E. GLENN, Esq.

Mr. McCulloch, collector, to Mr. Parker.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, May 26, 1819.

SIR: I have just received your letter respecting the ship Louisa, Ameida (or rather Drew) master, which sailed from this port on the 4th day of August, 1818, ostensibly on a sealing-voyage. As she was a foreign vessel no list of crew was, of course, demanded or rendered. She had been a prize, captured from the Spaniards some time before, and came here with a cargo. She was, therefore, no ways likely nor was ever pretended to be a vessel of the United States, nor do we know a man on board except the owner and captain above mentioned.

[127] She had been searched by my orders two or three *times during and after her landing.

In the last examination her casks, ballast, &c., were removed to the kelson after her clearance, and nothing prohibited appeared. Indeed it is not said that she had anything more than her own armament, and such stores as were allowed, at her departure from Baltimore. Ameida left her at sea and proceeded to Marguerita, from whence he came here in another vessel.

The piratical portion of the crew afterward deserve the severest punishment; but we can furnish nothing here for their conviction.

J. H. McCULLOCH.

THOMAS PARKER, Esq.

Mr. McCulloch, collector, to Captain Daniels.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, July 6, 1819.

SIR: Information is given that you are making alterations in the vessel of war under your direction and management here which, from their nature, are inadmissible as effected in our ports. You had promised not to take off the pieces put under the gun-slides and to restore the carriages to their former situation excepting such repairs as your own carpenter could make; you have had the work done by a citizen here and are going on to enlarge your hatchways, &c. This must be stopped

[128] and every *work besides which is necessary for the safe navigation of the vessels must be foreborne or undone, otherwise you will not be permitted to sail from this port.

J. H. McCULLOCH.

Captain J. D. DANIELS.

Mr. Glenn, district attorney, to Mr. McCulloch, collector.

BALTIMORE, *August* 24, 1819.

SIR: The inclosed letter was this day handed to me by Mr. Purviance, with a request that it might be transmitted to you.

I will thank you to take steps such as your official duty require to frustrate the illegal purpose which Daniels appears to have in view, and to let me hear from you as early as convenient on the subject.

Be pleased to return me the letter inclosed.

Yours, respectfully,

ELIAS GLENN.

Mr. McCulloch, collector, to Mr. Lowry, surveyor.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, August 25, 1819.

SIR: It is alleged that Captain Daniels has not only repaired the brig Negreda, a Spanish prize, in which he arrived, but has altered her

[129] masts, decks, and rigging, as well as her armament, that *her platform is renewed and fixed, that her mainmast, formerly schooner-

rigged, is now square rigged, her guns formerly on slides are now on carriages, sixteen in number, and that some brass pieces are added to her after-deck or bulwarks, which she had not before.

Please to order two officers, one of them the officer who inspected her at arrival, to visit and strictly examine her and report to me on these and other particulars in her case.

J. H. McCULLOCH.

Mr. LOWRY,
Surveyor Port of Baltimore.

Mr. McCulloch, collector, to Captain Marshall.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, October 25, 1819.

SIR: Information having been received of a South American privateer being in the bay, it is necessary that she should be attended to for prevention of any irregularities and breach of law. Be pleased, therefore, to sail immediately in search of her, and direct her to come without delay to the fort and enter, or leave the waters of the United States. In either case keep close to her; prevent vessels boarding her, or anything being landed from her except necessary supplies of provisions
[130] and water. *If she does not remove immediately, report must be made and recourse had to the naval and military officer of the United States for a force sufficient to control or bring her into port.

JAS. H. McCULLOCH,
Collector.

Captain JOHN MARSHALL.

Mr. McCulloch, collector, to Mr. Lowry, surveyor.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, November 15, 1819.

SIR: Please to direct two officers of inspection to examine, visit, and report to this office all and every privateer or ship of war under foreign colors. Take an account of every particular of armament; the number and description of crew—that is, what countrymen; under what commission they sail, and whether their commission is lodged at the custom-house, and, if not, demand it for depository here. From this last direction the brig Independencia, Gunnalds, commander, is to be excepted, as I have lately had his commission and know her to be a national vessel.

The officers will please to report, with as much expedition as possible, adding any remark of their own on the appearance or conduct of their crews or commanders.

J. H. McCULLOCH,
Collector.

WM. LOWRY, Esq.,
Surveyor Port of Baltimore.

[131] *Mr. Adams, Secretary of State, to Mr. Glenn, district attorney.*

DEPARTMENT OF STATE,
Washington, November 19, 1819.

SIR: Your letter of the 16th instant has been laid before the President of the United States, by whose direction I am happy to assure you that no complaint or charge of any kind has ever been exhibited to him against you, and that he has never received from any person the most distant intimation affecting the integrity of your character or the faithfulness of your official services. To this I add with pleasure that no representation of a different character has ever been received at this Department, and my entire conviction that the suggestion to you of Judge Duvall was founded upon erroneous information.

I am, &c.,

JOHN Q. ADAMS.

EL AS GLENN,
District Attorney of the United States, District of Maryland.

Mr. McCulloch, collector, to Mr. Jackson.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, December 3, 1819.

SIR: It has been reported to me this morning that you have said, upon being asked about some gun-carriages in your workshop, that they were partly old, and that the men who employed you to make them told you that they had the collector's instructions to do them in such
[132] a way as would *just keep clear of the laws, intimating thereby that they had been instructed by me in the way to evade the law. This is such an impudent, bare-faced falsehood that, though I am persuaded this has never been said to you, I cannot but wonder that you should believe and repeat such things, who surely know me well enough to suppose that I would neither emulate nor deliver such disgraceful lessons. The whole is a declaration of false knaves, and the carriages must not be delivered to any foreign vessel of war with those who are in peace with the United States, under penalty of aiding and assisting in fitting them out contrary to law.

I am, sir, with better hopes for your future observations on this subject and on me, yours,

J. H. McCULLOCH.

Mr. WILLIAM JACKSON.

Mr. McCulloch, collector, to Captain Webster.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, December 3, 1819.

SIR: Upon receiving this be pleased to attend the South American schooner El Ameida till she goes out of the Chesapeake. You will anchor near her when she anchors, and keep off all boats or vessels
[132] visiting her and prevent anything being *carried on board her from the water or land side that will add to her military strength.

The necessary supplies of fresh provisions and water and vegetables are not intended to be denied, but men and warlike stores must be driven off or seized.

If the inspector meet you he will give you the commission and clearance of the vessel, which you will please deliver to her commander at her departure.

J. H. McCULLOCH.

Captain JOHN A. WEBSTER.

Mr. McCulloch to any officer of the United States Navy or Army.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, December 18, 1819.

The brig Irresistible, a South American privateer, has left this port contrary to law.

The collector of the customs, therefore, according to instructions repeatedly directed to him from the Secretaries of the Navy and of War, requests the assistance of any naval officer or military commander to follow, detain, and send back said brig to this or any other judicial district of the United States.

Respectfully,

JAMES H. McCULLOCH.

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[134] **Mr. McCulloch, collector, to Captain Webster, Baltimore.*

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, January 8, 1820.

SIR: The South American brig of war Congressio de Venezuela being about to depart from this port, it will be necessary to examine her crew, and make report here if any difference in number and quality from what is permitted should be found. Persons thus improperly entered must be disembarked. Any addition to the force of the vessel in equipment and armament must be taken off before she can depart.

To enable you to perform the business aright, the report of the vessel at arrival, and the copy of her commission from court, are handed you with this. The latter, upon finding all right, you will please to deliver to the commander, on leaving him at the chops of the bay, whither it is proper to accompany him to prevent any illicit supplies going on board of articles of war forbidden by our neutrality.

With wishes for your pleasant run and a safe return,

Your obedient servant,

J. H. McCULLOCH.

Captain J. A. WEBSTER.

Mr. McCulloch, collector, to Captain Webster.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, December 18, 1819.

SIR: You will please to proceed immediately to Norfolk, and apply to any officer of the United States, having a suitable force at com-

[135] mand, to assist you *with all speed to intercept the brig Irresistible, to detain, arrest, and bring back to this port, or any district of the United States, the said brig; her commander and crew having violated the laws of the United States by entering and recruiting men in our district, thereby increasing her force, &c., in breach of our neutrality.

You will, therefore, run straight down, without stopping, and get ahead of the brig, if possible; and apply to the naval commander of any of the United States vessels to assist to stop her, and bring her in for trial for the said offenses.

Yours,

J. H. McCULLOCH.

Captain J. A. WEBSTER.

Mr. McCulloch, collector, to Mr. Glenn, district attorney.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, January 11, 1820.

SIR: I have directed a number of men, who have declared themselves to be citizens of the United States, to be landed from the South American brig Congressio de Venezuela, Richard Nivon, commander, who say they were shipped by certain persons for the service of that country against Spain, with whom we are at peace. They appear previously to have made oath, before justices of the peace for this city, that they were severally foreigners; but they now say that other men made oath for them; and they have enlisted under this simulated proceedings,

[136] as above said. *They will be brought to your office this afternoon, that you may take such testimony as you see needful, and prosecute the men who enlisted thus feignedly.

A paper containing the names of seamen and shippers, authenticated by the oath of Captain Daniels and the certificate of Captain Webster, of the cutter, as well as the magistrates' certificate of the oaths taken by the sailors before them, are all sent herewith.

JAS. H. McCULLOCH.

ELIAS GLENN, Esq.

Mr. Adams, Secretary of State, to Mr. Drayton, district judge.

DEPARTMENT OF STATE,
Washington, April 15, 1820.

SIR: I have had the honor of receiving your letter of the 21st ultimo, and, conformably to the recommendations contained in it, the President has determined not to interpose to respite, or suspend the execution of, the sentence of G. Clark and H. Roberts *alias* De Wolf. He has, in the cases of Griffin and Brailsford, directed a reprieve for two months from the 12th of May, the day fixed by the sentence of the court for their execution. It is his intention to pardon them ultimately on the capital conviction, but to leave them subject to the sentence of imprisonment which the court may pass upon them on the indictments to which they have pleaded guilty. I am uncertain whether, according to the course

[137] of judicial proceedings, *a sentence of imprisonment for a term ex-

tending beyond the period at which the reprieve will expire can be passed by the court, or whether it be necessary that a pardon for the piracy should issue, to enable the court to sentence them to imprisonment for a term of years, on the indictments for misprision of felony. In the latter case, I will be obliged to you for notice of it as early as may be convenient, upon which a conditional pardon for the piracy will be transmitted to the marshal, to take effect on the condition that the parties shall undergo such term of imprisonment as the sentence of the court may decree against them on the indictments for the minor offenses to which they have pleaded guilty. It is presumed that there will be time for me to be honored with your reply to this letter, and for such a conditional pardon to be made out and to reach the marshal before or at the day of the next session of the circuit court.

I am, &c.,

JNO. QUINCY ADAMS.

JOHN DRAYTON, Esq.,
United States District Judge, Charleston.

Mr. Adams, Secretary of State, to Mr. Nicholson, United States marshal.

DEPARTMENT OF STATE,
Washington, April 17, 1820.

SIR: Since the date of the pardon and reprieves, which were forwarded to you on the 3d instant, in the cases of John Trickhart, Peter
[138] Morel, and others, who *are under sentence of death for piracy, the President has understood that, according to usage in the State of Louisiana, when capital punishment is to be inflicted, death-warrants are necessary; and, in conformity with that practice, I inclose herewith two death-warrants, respectively enjoining the execution of the sentence passed upon John Derfarge and Robert Johnston by the district court of the United States for your district.

Please to acknowledge the receipt of this letter and its accompanying inclosures.

I am, &c.,

JOHN QUINCY ADAMS.

JOHN NICHOLSON, Esq.,
Marshal of the United States
in and for the district of Louisiana, New Orleans.

Mr. Adams, Secretary of State, to Mr. Austin.

DEPARTMENT OF STATE,
Washington, May 25, 1820.

SIR: In answer to your letter of the 22d ultimo, and that of the 16th instant, I have to state that, upon the receipt of the former, which inclosed the petitions of William Holmes, Edmund Rosemaine, and Thomas Warrington, for pardon, in the case of their conviction for the crime of piratical murder, they were submitted to the President, who referred the papers to the Attorney-General for his opinion. A copy of that opinion is herewith transmitted to you, in which, from a full con-

sideration of all the circumstances presented to his view, the
139] President reluctantly feels himself com*pelled to concur.

I am, &c.,

JOHN QUINCY ADAMS.

JAMES T. AUSTIN, Esq.,
Boston, Massachusetts.

Mr. Adams, Secretary of State, to Mr. Prince, United States marshal.

DEPARTMENT OF STATE,
Washington, May 25, 1820.

SIR: Your letter of the 17th instant, which informs me of the sentence pronounced upon Rosemaine and others, by the circuit court of the United States for the district of Massachusetts, has been duly received. From a full consideration of all the circumstances of the case, the President declines interposing, and leaves them to the operation of the law.

I am, &c.,

JOHN QUINCY ADAMS.

JAMES PRINCE, Esq.,
Marshal of the United States for the district of Massachusetts.

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[140] **Mr. Adams, Secretary of State, to Mr. Parker, district attorney.*

DEPARTMENT OF STATE,
July 29, 1820.

SIR: I have had the honor of receiving you letters of the 1st, 2d, and 21st instant, and shall pay every attention in my power to their contents.

The frigate Constellation has sailed, or is about to sail, from New York for Buenos Ayers. Mr. Forbes goes out in her, and has been instructed to remonstrate in the strongest terms against the articles of their privateering ordinance, which open the door to all the piracies committed under their flag. These articles are the third and the eighth, as you will immediately perceive on reference to them. (See appendix to 4 Wheaton's Reports, p. 30, 31.) Commodore Perry, and afterward Commodore Morris, were instructed to remonstrate against them; but the lamentable death of the former prevented his ever reaching Buenos Ayres; and the state of anarchy and revolution in which the latter found that country made his remonstrances ineffectual.

Mr. Forbes is charged to state the cases both of the General Ron-
[141] deau and the Wilson; but by the manifesto of Mr. Surgeon *Wheedon, published in our papers, Captain Almeida no longer hails from Buenos Ayres, nor calls his brig the Wilson. He has become a denizen of the new republic of Colombia, and calls his privateer the Bolivar. This same Almeida was the captain of the Louisa, from which I think Clark and [illegible] were hung; but he was then a Buenos Ayrean.

Wr. Wheedon insists that the only proper court to try the merits of his cause is the court at the island of Margaritta. It is precisely that court, combining with the third and eighth articles of the Buenos Ayres privateering ordinance, which sanctions all the piracies. We have remonstrated, and shall continue to remonstrate against its proceedings.

But I believe our ultimate reliance for the suppression of piracy must be upon the tribunals of our own country.

You will have seen by the newspapers that the mutineers of the General Rondeau killed only one of their officers, and that Captain David B. Miles has safely arrived at Margaritta, and there proclaimed them pirates. We have evidence at this Department that this Captain Miles, in May, 1819, went from Buenos Ayres to Valparaiso with
[142] one of his prizes, and there entered her as a *vessel of the United States, with forged papers, bought at Buenos Ayres for five hundred dollars, by Mr. Juan Higginbotham, mentioned in your letter of the 2d instant as part owner of the General Rondeau.

If Miles should make his appearance in this country to bear testimony against his mutineers, it will serve infinitely more the cause of justice if testimony can be obtained to reward him according to his own deserts. I beg leave to recommend this to your particular attention. This fact of his going with forged United States papers to Valparaiso, in a pretended ship Mercury, you will please to keep secret for the present, but if he shows his face in the prosecution of his mutineers, you will make such use of it as you may think advisable. The forged papers are here, and an insolent letter from Higginbotham to Mr. Hill, the vice-consul at Valparaiso, who, as his duty required, obtained possession of the papers and sent them to this Department. Should copies of them or the originals themselves be necessary upon any of the trials, they shall be furnished upon your application for them.

I am, &c.,

JOHN QUINCY ADAMS.

THOMAS PARKER, Esq.,
United States District Attorney,
Charleston, South Carolina.

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[143] **Mr. Adams, Secretary of State, to Mr. Glenn, district attorney.*

DEPARTMENT OF STATE,
Washington, August 2, 1820.

SIR: Information has been given to the President of the United States that the Portuguese ship Montalegre was sold on the 1st of June, purchased by a person named Chase, now under indictment for piracy, and is to be fitted out as a privateer, and to be commanded by Captain Taylor.

It is certain that this purpose cannot be carried into effect but by the grossest violation of the laws of the United States. The execution of the two miserable men who had been induced to join a similar unlawful armament in the port of Baltimore, and the numerous other victims of such expedition whose forfeited lives have been spared only by the clemency of the Executive, have exhibited in the deepest colors the duty of vigilance in all the officers of the United States, to arrest before their accomplishment attempts, the natural and unavoidable consequences of which are thus awful and calamitous. I am directed by the President of the United States earnestly to request your attention to this case, and if by any official interposition of yours, or of any other officer of the Government at Baltimore, the design of this new outrage upon
[144] the laws of the country, of nations, and of humanity can *be frus-

trated, he trusts that no exertion will be wanting on your and their part to that end.

I am, &c.,

JOHN QUINCY ADAMS.

ELIAS GLENN, Esq.,
District Attorney United States for the District of Maryland.

Mr. McCulloch, collector, to Mr. Glenn, district attorney.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, November 1, 1820.

DEAR SIR: Upon receiving your note with that of the Spanish consul inclosed, an order was immediately given to two inspectors of the customs to proceed to the point and examine the several vessels mentioned in a particular manner, and a report has just been handed to me by the officers thus appointed, the result of which, in their own words, is as follows:

At Captain Merrick's wharf found a new schooner completely rigged, with three gilt stars on the stern, no name, and nothing on board except a small quantity of ballast. The second vessel named was not found. There are other schooners at the wharf, viz.: the Blucher, Waverly, and a quite new vessel, mast standing only, and a considerable quantity of water in the hold.

The brig Independencia has 15 guns mounted on deck, and her old or former armament; no sails bent; with two persons on board.

[145] *To this I add that the first schooner (with stars) is owned by Captain Kelly, the Blucher, by Coll's Tennant, the Waverly, by C. Malloy and J. Williams. The two last have lately returned from commercial voyages, the first is, as well as the last, owned by persons hitherto clear of any imputations of such proceeding as the consul seems to apprehend. It must be supposed he is deceived by persons who report in this case without knowledge of the ownership or circumstances of the vessels beyond their outsides. The Independencia is a public vessel of the Buenos Ayrean government, and cannot be detained when she is ready to proceed, unless upon knowledge of illegal armament, &c.

JAS. H. McCULLOCH.

ELIAS GLENN, esq.

P. S.—The new vessel cannot move till measured, &c.

Mr. McCulloch, collector, to Captain Webster.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, November 3, 1820.

SIR: Please to proceed down the bay with the cutter Active under your command. The Sally, Caruthers master, cleared here on the 16th October, and after examination was permitted to proceed with one gun in the hold, &c., as reported in her manifest. Circumstances, concurring with information from the Spanish embassador, lead us to believe [146] that there is an intention to cruise with that vessel before *her arrival perhaps at a foreign port. If you find any additional men on board under the name of passengers or otherwise, you had better take

her into Norfolk and search her thoroughly. If more guns are found on board, or articles of warlike preparation considerably beyond the contents of the manifest, bring her here for trial. If no addition of men or no material difference of military stores appears, take away the gun-carriage or its trucks, rammers, &c., to prevent any use being made of it during the passage outward, or make them land the gun itself, that no pretense may be left of their having fitted here for hostilities.

I am, yours, &c.,

J. H. McCULLOCH.

Captain JOHN A. WEBSTER.

Mr. McCulloch, collector, to Captain Webster.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, December 13, 1820.

SIR: Please to proceed with the cutter Active, under your command, in company with the Buenos Ayrean brig of war Independencia del Sud to the capes of Virginia, for the purpose of preventing any improper communication with the shore or with any vessels which might convey to her supplies of arms, ammunition, or men. She is a public vessel, and therefore we have treated her with a little more respect than
[147] some others not bearing the same *commission. Her officers have also been particular in their manner, and well-behaved heretofore.

If she goes into Norfolk you will then report yourself to the collector there, and resign your charge to the officers of that port, returning with the usual lookout on both sides of the bay, and as you find it expedient at this season.

J. H. McCULLOCH.

Captain JOHN A. WEBSTER.

Mr. McCulloch, collector, to Mr. Lowry, surveyor.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, August 18, 1821.

SIR: Please direct the officer charged with an attention to the South American brig San José to go on board and peremptorily forbid the putting in ring-bolts, stanchions, or any other appurtenance to the mounting of guns beyond what she was fitted with at arrival here.

JAMES H. McCULLOCH,
Collector.

WILLIAM LOWRY, Esq.,
Surveyor of the Port of Baltimore.

Mr. McCulloch, collector, to Mr. Crawford, Secretary of the Treasury.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, October 3, 1821.

SIR: Since writing this morning by Captain Dieter on the subject of a South American vessel, which has been reported to you before,

[148] the Spanish *consul *ad interim* has addressed me a note respecting her, which I beg leave to transmit for your inspection. As he called on me himself I had the opportunity of finding that his statements are made on the reports carried to him, as was to be expected. As to her taking guns or men within our waters, that shall be guarded against by the fullest inspection here and sending the cutter to accompany her to sea. But the officers of the vessel, knowing the suspicion entertained here, have not only made the strongest assurances of their fair intentions, but have requested that an inspector should attend at the taking in of every article permitted, saying that, if wanted, her old armament remains at Margueritta, and they have no occasion for anything but what can be supplied there for military purposes. They wanted a new cam-house, which they did not offer to take until they applied for permission, which was granted after the ruined state of the old one was ascertained. No extraordinary supplies of any kind will be allowed to her here, but the matter is submitted to your judgment upon all the representations.

J. H. McCULLOCH.

WM. H. CRAWFORD, Esq.

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[149] **Mr. McCulloch, collector, to Mr. Crawford, Secretary of Treasury.*

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, November 8, 1821.

SIR: As soon as practicable after receiving your letter of the 5th instant, respecting the South American brig San José, another examination was ordered, to ascertain the state of the vessel, agreeable to your direction. It is but a little while since the same measure was taken, upon a note being addressed to me by the Spanish consul here. It was not thought necessary to make any observations to the Government on the subject. I was apprised that a copy of his note was transmitted to the minister at Washington. The fact is that a constant watch has been kept on this vessel, and we are acquainted with every particular respecting her. But the reporters to the Government give the rumors constantly floating in their atmosphere, in which conjecture and imagination take the greatest part. Mr. Beatty, the Navy agent, upon being called upon for such information as he had, was not a little displeased that his name should be given in support of the rumors, which, indeed, he acknowledged he had laid before the Department, but without any knowledge of his own.

I beg leave to repeat, in his own words, the report of the officer charged with the present examination:

[150] *BALTIMORE, *November* 8, 1821.

I certify that I have been attending upon the prize San José since the 22d October at least twice a day, and have this day examined the magazine and hold of said vessel, and do report that there is no cargo, no ammunition of war, nor any equipments other than when she arrived; that there is nothing in her magazine, and nothing but water-casks and ballast in her hold; that her present complement of men is four Spaniards, who came in the vessel.

JAMES BURNS, *Inspector.*

J. H. McCULLOCH.

WM. H. CRAWFORD, Esq.

Mr. McCulloch, collector, to Captain Webster.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, November 15, 1821.

SIR: In consequence of directions received from the Department of the Treasury the cutter Active is to proceed, in company with the South American brig San José, down the bay till she meets the cutter from Norfolk, which is ordered to be in readiness near that station, and which will then relieve you of the charge, both as to the vessel and the
[151] marines put on board of you there. You *will afterward continue to cruise in the neighborhood of the capes for the purpose of intercepting any vessel having on board men, arms, or munitions of war intended for that vessel. But, as the season is uncertain, and your vessel small, the time employed in the latter service must be ordered with discretion, and the cutter preserved from the casualties of seas and weather as far as possible.

The papers of the vessel and the clearance from this port are handed you herewith. You will deliver them to the captain of the San José at parting, or rather to the commanding officer of the United States marines if he should go on board when you leave the brig, but not otherwise, that she may not be exposed without papers by accidental parting from the Norfolk cutter, as first directed. This is added, as I am ignorant of the orders given to that vessel.

J. H. McCULLOCH.

Captain JOHN A. WEBSTER.

Mr. McCulloch, collector, to Mr. Lowry, surveyor.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, December 16, 1822.

SIR: Please to direct an officer to examine minutely the equipment of the Colombian schooner General Paez, Jno. Chase commander,
[152] to ascertain that her repairs have not exceeded what our *neutrality permits; that is, that the work here done to the vessel has not added to her military strength or fitted her for receiving additional armament, or that they confer any other or more capacity than she possessed at her entrance here, except as replacing spars and other furniture or tackle unfit for safe navigation.

The officer must also exercise a particular vigilance as to any men or articles of armament being clandestinely put on board or in preparation, as far as possible, and report seasonably to this office.

J. H. McCULLOCH.

WM. LOWRY, Esq.,
Surveyor of the Port of Baltimore.

Mr. McCulloch, collector, to Mr. Johnston.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, March 19, 1823.

SIR: The Colombian schooner General Paez, commanded by John Chase, arrived here in August last from a cruise, and applied for per-

mission to make repairs; this was granted, but as coming in under such circumstances forbids an entry, her cargo was taken into possession. While refitting, suits having been brought against the captain, he was arrested, committed to jail, and the goods taken and sold by the marshal, &c., &c. The vessel has remained ever since till to-day,
[153] when the *captain, being liberated unknown to me, speedily got on board with his tackle, &c., and seizing the opportunity of a fresh wind he set sail, and has run out of the harbor and river, with intent no doubt to proceed immediately to sea. Our cutter has been dispatched after him with a civil officer and process for arresting him and detaining the vessel, he having without any right in himself carried off the schooner, and having neither made declaration nor taken clearance at this office, besides leaving a number of private claims unsatisfied. I beg that if any vessel of war or the revenue-cutter is in port, they may be immediately required to stop this fellow, whose whole conduct is of the most desperate and flagitious character. Our cutter being gone, this is sent by the steamboat in hopes that a change of wind may detain the disorderly privateersman somewhere, and give opportunity to bring him to correction for his misbehavior.

J. H. McCULLOCH.

JAMES JOHNSTON, Esq.

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[154] *Mr. McCulloch, collector, to Mr. Crawford, Secretary of the Treasury.*

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, March 26, 1823.

SIR: It is proper to inform you that the Colombian cruiser General Paz, Chase commander, of whose situation I had written to you August 13, 1822, has been suddenly carried off from this port without declaration or clearance by the said John Chase, in contempt of the public authorities, and injuriously to individuals concerned.

The captain had been arrested here at the suit of a foreign agent, the cargo on board his vessel sold by order of court, and himself imprisoned for want of bail. The vessel remained dismantled for several months, till during the last week the captain received a discharge under the insolvent laws of this State, as is reported. This was unknown to me till information came from the cutter that he was preparing the vessel for sea. But this was done so secretly and expeditiously by a few of his officers and passengers that the officer of the cutter had scarcely started to bring the information before the privateer was under
[155] full sail and running down the river. Having a strong and *favorable wind, blowing almost a storm, she reached the capes and went to sea next morning, being followed in vain by our cutter, and, as I am informed, by the United States brig Spark, which, at my request through the collector of Norfolk, had been dispatched in pursuit.

What has made the transaction more remarkable is the circumstance that several persons interested to observe his motions, and who were living around the spot, were unapprised of the preparations for the vessel's departure, and were as ignorant as every one else; a few officers having put her under way at breakfast-time, and some men having been silently dispatched the night before in two or three small boats to be taken on board below.

It was an additional unluckiness of occurrence that the captain and first officer of the cutter were both confined to their beds by sickness at the moment. The second officer, Mr. Philip Marshall, with great zeal and activity, got under sail and pursued the fugitive to the capes, agreeably to his orders, notwithstanding the boisterous season.

J. H. McCULLOCH.

WM. H. CRAWFORD, Esq.

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[156] **Mr. McCulloch, collector, to Mr. Lowry, surveyor.*

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, August 9, 1824.

SIR: Please to send two inspectors of the customs to-morrow morning to examine the Colombian cruiser Aguila, below the fort. The object is to ascertain that no addition is made to her force by any new warlike equipments or enlistments of American seamen. In case such should appear, you will direct the officers to detain the commission, &c., of the vessel herewith sent and immediately report it here. If otherwise, they will deliver the captain his papers, and if the cutter can be found, deliver Captain Webster the letter handed herewith. Return if no occasion requires a further proceeding. But if the cutter is not to be seen, it will be proper for an officer to go on till she can be met with or any other public vessel, to the commander of which the letter to Captain Webster may then be delivered.

J. H. McCULLOCH.

WM. LOWRY, Esq.,
Surveyor of the Port of Baltimore.

Mr. McCulloch, collector, to Captain Webster.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, August 9, 1824.

SIR: It seems necessary that you should proceed with the cutter
[157] to accompany the South *American brig Aguila or Eagle down the bay to the capes. You will, with the inspectors of the customs, who are directed in the business, visit and examine the vessel to see that she has not made an addition to her armament or warlike stores or equipments, of which an inventory at her entry is sent by the inspectors. The crew must also be examined, and any that appear to be Americans taken out and brought here, that they who shipped them may be dealt with according to law. You will then please to accompany the vessel and prevent all boats from boarding her unless with provisions and refreshments.

You are acquainted with the reasons that make this necessary under the laws of neutrality, for the observance of which our Government and all its agents are answerable. We have certainly suffered by the irregular conduct of many of these cruisers heretofore, though Captain Cottrell, I trust, has not nor will not intentionally infringe our regulations. But the temptations to enlist men are such that the people he employs may care but little what becomes of the peace of the country or for the safety of our people who visit the ports of Spain and her colonies.

[158] The vexation given to us and myself, as *much concerned personally in the execution of the laws, has determined me to exact a rigorous compliance with them in all cases.

J. H. McCULLOCH.

Captain JOHN A. WEBSTER.

Mr. Sterling, district attorney, to Mr. Williams, Attorney General.

UNITED STATES ATTORNEY'S OFFICE
FOR THE DISTRICT OF MARYLAND,
United States Court-House, Baltimore, January 30, 1872.

SIR: Referring to your letter of January 15, 1872, in which you say that the Secretary of State has requested you to obtain from me a full report of any evidence I may find on the records in my office, or of the United States courts in the district of Maryland, which will tend to show in what manner the United States sought to maintain its neutrality, before the courts in that district, from the year 1815 to 1830 inclusive, I respectfully report as follows:

There are no papers or records of any kind in the office of the United States attorney for this district for the years stated in your inquiry. The reason for this is, that the attorneys, at that time, had no offices, except their private ones as members of the bar, and all papers

[159] *in their possession at that time are either among their private papers or are lost, or are among the records of the United States courts for this district. I have had a careful search made under my personal oversight in all the records of said courts, for the period from 1815 to 1830 inclusive. I have personally examined the papers and dockets in cases of prosecutions during those years, by libels on vessels, and by indictments for breaches of the neutrality laws of the United States, and I find abundant evidence from these records that the attorneys of the United States for this district, during those years, were active and diligent in enforcing those laws, by libels against vessels, and by indictments, both under the neutrality act of 1818, chapter 88, and the piracy act of 1819, chapter 77.

I find that the same parties were indicted at the same term of court under both laws, and that the piracies charged were alleged to have been committed on the property or persons of subjects of the Kings of Spain and Portugal, and that those who had served on armed vessels, cruising against Spanish or Portuguese commerce, were indicted for piracy under the above-mentioned act of 1819, which act the

[160] records show to have been used by the United States attorney *to enforce the neutrality of the United States, as well as the above-mentioned act of 1818.

It appears by the dockets that, in cases under the above laws where the process of arrest against the persons indicted was returned *non est inventus*, renewals of process were made and continued during several successive terms of court, showing diligent efforts to secure the arrest of the persons indicted; and, generally, the papers and dockets during the years aforementioned exhibit, on inspection, evidence of constant activity and diligence on the part of the law-officers of the Government here in enforcing the provisions of the neutrality laws and maintaining before the courts the neutrality of the United States.

ARCHIBALD STERLING,
Attorney of the United States for the District of Maryland.

Hon. GEORGE H. WILLIAMS, *Attorney-General.*

[163] *Mr. Graham, Secretary of the Navy, to Commodore McCauley, United States Navy.*

NAVY DEPARTMENT, *November* 17, 1851.

SIR: Information has reached the President of the United States that an effort is being made at San Francisco, California, to raise an expedition for the purpose of establishing a new form of government at the Sandwich Islands, and it is apprehended that citizens of the United States may, in violation of our laws, fit out military expeditions from California for the purpose above referred to.

You are, therefore, directed by the President to consult with the United States marshal, the collector, and other United States officers at San Francisco, in order to prevent any military expedition or
[164] enterprise being carried on from thence against *the government of the Sandwich Islands. You will observe the movements of all vessels leaving the waters of California, for the purpose of ascertaining if any military expedition or enterprise has been begun or set on foot or any means provided to be carried from the United States, to be used against the government of the Sandwich Islands, and should you discover any vessel engaging in or carrying on any such expedition or enterprise, whether by transporting troops and arms and munitions of war or otherwise, which you shall have reason to believe has been fitted out in the territories of the United States, you will prevent her proceeding thereon by seizing such vessel, taking her to the most convenient port, and delivering her over to the marshal of the district in which the same is situated.

You will dispose of the vessels of your command in such manner as will be best calculated to secure the objects of this order.

Should you ascertain that a military expedition is on foot and has proceeded against the Sandwich Islands, you will repair, with force under your command, to those islands, and use all lawful means to arrest and prevent its landing there, or on other territory of a friendly power.

The provisions of the act of Congress approved April 20, 1818,
[165] entitled "An act in addition to the act *for the punishment of certain crimes against the United States," will be your guide.

The Department will expect full and prompt information of all your movements.

I am, very respectfully, &c.,

WILLIAM A. GRAHAM.

Commodore CHARLES S. MCCAULEY,
Commanding United States Squadron.

Mr. Fillmore, President, to General Hitchcock, United States Army.

EXECUTIVE CHAMBER, *November* 18, 1851.

SIR: Recent information induces me to believe and to apprehend that efforts are making and will be made to fit out, for the invasion of the Sandwich Islands, military expeditions from California, in violation of the laws of the United States and of our obligations to a friendly power.

Every such attempt must, if possible, be arrested; and having full confidence in your discretion and ability to execute the high powers

which I confer, you are hereby authorized and empowered, in virtue of the eighth section of the act of Congress of the 20th of April, 1818, to take all proper measures, and employ such part of the land forces of the United States, or of the militia thereof, as may be necessary for the purpose of preventing the carrying on of any such expedition or
[166] enterprise from any port or *place within the limits of your division against the territories or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

You will, in case of doubt, act under the legal advice of the district attorney of the United States for the district of California.

I am, sir, &c.,

MILLARD FILLMORE.

By the President.
DANIEL WEBSTER,
Secretary of State.

Brevet Brigadier-General E. A. HITCHCOCK,
Commanding Pacific Division, Sonora, California.

Mr. Conrad, Secretary of War, to General Hitchcock.

WAR DEPARTMENT, *November* 19, 1851.

SIR: Information recently received at this Department induces an apprehension that an attempt may be made, in violation of our laws, to fit out and send an armed expedition against the government and people of the Sandwich Islands. I therefore transmit you herewith full powers from the President of the United States to enforce the provisions of the act of April 20, 1818, should such an attempt be made within the limits of your command.

[167] You are directed to be vigilant and active *in preventing any expedition or enterprise being carried on from the United States against said islands.

You will endeavor by every means in your power to ascertain whether any military expedition or enterprise has been, or is about to be, begun or set on foot, or any means provided to be carried from the United States to be used against these islands. And should you discover any vessel engaged in preparing for such expedition or enterprise, whether to transport troops or arms or munitions of war, you will prevent her proceeding by seizing and delivering her to the United States marshal of the district in which the seizure is made. You will, to this end, confer or correspond with the collectors of the customs at San Francisco and San Diego, who have been directed to co-operate with you in the execution of this order.

Instructions have been given to the officer in command of the naval forces on the Pacific to co-operate with you when applied to by you for that purpose.

Very respectfully, &c.,

C. M. CONRAD,
Secretary of War.

Brevet Brigadier-General E. A. HITCHCOCK,
Commanding Pacific Division, Sonora, California.

[168] **General Hitchcock to Mr. Hammond, collector.*

HEADQUARTERS, PACIFIC DIVISION,
San Francisco, September 22, 1853.

SIR: In a communication from the honorable Secretary of War, of November 19, 1851, inclosing instructions from the President of November 18, 1851, "to arrest, if possible, any expedition or enterprise from any port or place within the limits of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace," I am directed to confer with, or correspond with, the collector of this port.

Under these circumstances, I feel called upon to advise you that I have been confidentially informed, from what I regard as a reliable source, that a hostile expedition is now, in all probability, nearly ready to start from this port for the purpose of seizing Guaymas, in the expectation that the people of Sonora may declare in favor of the invaders. If such an expedition is on foot it would clearly fall within the class to be "arrested, if possible," and I therefore request that, if you deem it proper, your will instruct one or more of your officers confidentially to keep a strict eye upon all vessels preparing for sea in this port, and in
[169] case of any vessel becoming an object of suspicion on account *of receiving on board supplies of a military character, or being fitted up to receive armed men on board, &c., I may be informed of the suspicious circumstances in order to seize the vessel, if it should be necessary for the execution of my instructions.

I am, sir, very respectfully, &c.,

E. A. HITCHCOCK,
Colonel Second Regiment, Brevet Brigadier-General.

RICHARD P. HAMMOND, Esq.,
Collector of San Francisco.

Mr. Hammond, collector, to Mr. Guthrie, Secretary of the Treasury.

CUSTOM-HOUSE, SAN FRANCISCO,
Collector's Office, September 30, 1853.

SIR: I have the honor to inclose copies of correspondence in relation to an expedition which it is suspected is on foot here for the purpose of seizing the Mexican port of Guaymas and invading the department of Sonora in that republic. The laws upon this subject confine my discretion, and I have hoped that either the United States marshal or the military commander may have had instructions conferring more ample powers. With this view, I have advised them of all the facts in my possession, and trust they may see fit to seize and detain this vessel. Should they decline to act, I shall not permit the vessel to leave this port, but shall seize her, and endeavor to convict those engaged in the expe-
[170] dition; *and, in any event, shall require a bond from the owners, as provided for by law.

I have no special instructions upon this subject, but shall hold it my duty to prevent, if possible, any attempt against Mexico or the Sandwich Islands, to both of which countries the eyes of restless men here are now turned, with intent of conquest.

Very respectfully, your obedient servant,

RICHARD P. HAMMOND,
Collector.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

Mr. Hammond, collector, to General Hitchcock.

CUSTOM-HOUSE, SAN FRANCISCO,
Collector's Office, September 30, 1853.

SIR: In acknowledging the receipt of your letter of September 22, 1853, I beg to inform you that the English-built brig Arrow, now lying at the foot of Clay-street wharf, is fitting up to accommodate a large number of men on board, and is supplying herself with water and sea-stores in such quantities as may induce suspicion to the object of her intended voyage. She has been in the trade between this and Guaymas, and is evidently arranging to make her next voyage for purposes other [171] than the *mere transport of freight and an ordinary number of passengers. I have not been able to ascertain that any arms have been carried on board. She will leave this port between this and the 5th proximo. I deem it proper to direct your attention to the vessel, as the circumstances which attach to her may authorize your proceeding under the instructions of the President of November 18, 1851, referred to in your letter to myself.

I inclose also a letter written by me to Commodore Dulancy, of the United States ship Saint Lawrence, now at Acapulco. Should you approve the purpose of that letter, may I suggest that you will join in the communication to that officer or correspond with him by the mail tomorrow.

Very respectfully, &c.,

RICHARD P. HAMMOND,
Collector.

Brigadier-General HITCHCOCK,
Commanding.

Mr. Hammond, collector, to Commodore Dulany.

[Confidential.]

CUSTOM-HOUSE, SAN FRANCISCO,
Collector's Office, September 30, 1853.

SIR: I have been led to believe that an attempt will be made to invade and take armed occupation of a portion of the territory of the republic of Mexico upon the Pacific coast.

If I am rightly informed, a party of lawless men are now pre- [172] paring and fitting out an ex*pedition to sail from this port, with the intent to land at the port of Guaymas, or at some other point in the Mexican territory bordering on the Gulf of California.

They will probably leave this port prior to the 5th proximo. Every exertion will be made to ascertain the name of the vessel, and to arrest the progress of this unlawful expedition, but it is quite probable that its leaders may elude all vigilance, and succeed in getting to sea. I have no revenue-cutter at my command fit to render any important assistance, and I have deemed it proper to advise you of the facts, with a view of requesting your presence with your vessel in the waters of the gulf. Any attempt upon this coast to disturb the relations of peace and amity between the United States and Mexico is, in my judgment, to be especially deprecated at this moment, and I feel satisfied that every possible

exertion of the officers of the United States should be used to detect and arrest those engaged in such unlawful enterprises.

I may be permitted to call your attention to the laws of the 30th April, 1818, in respect to this subject.

Very respectfully, &c.,

RICHARD P. HAMMOND,
Collector.

Commodore BLADEN DULANCY.

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[173] **Mr. Hammond, collector, to General Richardson, United States marshal.*

CUSTOM-HOUSE, SAN FRANCISCO,
Collector's Office, September 30, 1853.

SIR: I have the honor to inform you that the brig Arrow, now lying at Clay-street wharf, is preparing and fitting out for a sea-voyage, under circumstances which are calculated to induce a suspicion that she is to be used to convey an armed force from this port against the citizens of the Mexican Republic.

I am also told that you have received some communication from the American minister in the city of Mexico, and are probably prepared by that and other instructions to endeavor to arrest any expedition fitting out for such purpose.

I deem it proper, therefore, to direct your attention to the above-named vessel, and to signify my readiness to co-operate with you to prevent any infraction of the neutrality laws of the country.

Will you be pleased to inform me as speedily as possible what course you shall determine to pursue.

Very respectfully, &c.,

RICHARD P. HAMMOND,
Collector.

General WM. H. RICHARDSON,
United States Marshal.

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[174] **Mr. Davis, Secretary of War, to General Wool, United States Army.*

WAR DEPARTMENT,
Washington City, January 12, 1854.

SIR: In addition to the ordinary duties of the military command to which you have been assigned, it is deemed proper to direct your attention to certain special duties which will devolve upon you. Among these will be the duty of maintaining our international obligations by preventing unlawful expeditions against the territories of foreign powers.

Confidence is felt that you will, to the utmost of your ability, use all proper means to detect the fitting out of armed expeditions against countries with which the United States are at peace, and will zealously co-operate with the civil authorities in maintaining the neutrality laws.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Brevet Major-General JOHN E. WOOL, *U. S. A.*

Mr. Cushing, Attorney General, to Mr. Inge, district attorney, California.

ATTORNEY-GENERAL'S OFFICE,
January 16, 1854.

SIR: I am directed by the President to call your attention to the several acts of Congress for the preservation of the neutral relations of the United States, more especially to the acts of March 3, 1817, and April 20, 1818, which prohibit the organizing or fitting, within the
[175] *United States, of any expedition, military or naval, against the territories of any government with which this Government is at peace, and subject all engaged in such acts to punishment as for a high misdemeanor, besides authorizing the employment of the public force for the prevention and arrest of the same.

The President has regretted to perceive that persons in California are charged with engaging or intending to engage in such unlawful enterprises against the territories of the Mexican republic, with which this republic is in amity, and, justly solicitous to maintain the honor and the good faith of the American Government, as well as to see to the execution of the laws, he expects you to exercise the utmost vigilance in the detection and prosecution of all acts within your official district in violation of the neutral obligations of the United States.

I have the honor to be, &c.,

C. CUSHING.

Hon. S. W. INGE,
United States District Attorney.

By the President of the United States.

A PROCLAMATION.

Whereas information has been received by me that an unlawful expedition has been fitted out in the State of California, with a view
[176] to invade Mexico, *a nation maintaining friendly relations with the United States, and that other expeditions are organizing within the United States for the same unlawful purpose; and whereas certain citizens and inhabitants of this country, unmindful of their obligations and duties, and of the rights of a friendly power, have participated, and are about to participate, in these enterprises, so derogatory to our national character, and so threatening to our tranquillity, and thereby incurring the severe penalties imposed by law against such offenders:

Now, therefore, I, Franklin Pierce, President of the United States, have issued this my proclamation, warning all persons who shall connect themselves with any such enterprise or expedition that the penalties of the law, denounced against such criminal conduct, will be rigidly enforced, and I exhort all good citizens, as they regard our national character, as they respect our laws or the laws of nations, as they value the blessings of peace and the welfare of their country, to discountenance, and by all lawful means prevent, such criminal enterprises; and I call upon all officers of this Government, civil and military, to use any
[177] efforts *which may be in their power to arrest for trial and punishment every such offender.

Given under my hand and the seal of the United States, at Wash-

ington, this eighteenth day of January, in the year of our Lord one thousand eight hundred and fifty-four, and the seventy-eighth of the independence of the United States.

[L. S.] FRANKLIN PIERCE.

By the President.

W. L. MARCY,
Secretary of State.

Extract from the President's message.

WASHINGTON CITY, *December* 4, 1854.

It has been my anxious desire to maintain friendly relations with the Mexican republic, and to cause its rights and territories to be respected, not only by our citizens, but by foreigners who have resorted to the United States for the purpose of organizing hostile expeditions against some of the States of that republic. The defenseless condition in which its frontiers have been left has stimulated lawless adventurers to embark in these enterprises, and greatly increased the difficulty of
[178] enforcing our obligations of neutrality. Regarding *it as my solemn duty to fulfill efficiently these obligations, not only toward Mexico but other foreign nations, I have exerted all the powers with which I am invested to defeat such criminal proceedings and bring to punishment those who, by taking a part therein, violated our laws. The energy and activity of our civil and military authorities have frustrated the designs of those who meditated expeditions of this character, except in two instances. One of these, composed of foreigners, was at first countenanced and aided by the Mexican government itself, it having been deceived as to their real object. The other, small in number, eluded the vigilance of the magistrates at San Francisco, and succeeded in reaching the Mexican territories; but the effective measures taken by this Government compelled the abandonment of the undertaking.

Mr. Cushing, Attorney-General, to Mr. McKeon, district attorney.

ATTORNEY-GENERAL'S OFFICE, *April* 25, 1855.

SIR: The Secretary of State having referred me to your letter of the 24th instant, with its inclosures, I have taken the directions of the President on the subject, and in accordance therewith have to request
[179] you to institute legal proceedings against *Colonel Kinney and the steamer United States, provided, in your judgment, the evidence accessible will suffice to afford probable cause.

I have the honor to be, &c., &c.,

C. CUSHING.

JOHN MCKEON, Esq.,
United States District Attorney, New York.

P. S.—Since writing the above, I have seen the letter of Mr. Fabens in the New York Herald of yesterday, which seems to require that he be proceeded against equally with Colonel Kenney.

C. C.

Mr. Cushing, Attorney-General, to Mr. McKeon, district attorney.

ATTORNEY-GENERAL'S OFFICE, *May* 25, 1855.

SIR: I am directed by the President to inclose to you the within communication, addressed to Captain Boarman, containing proper authority for the detention of the steamer United States.

As the authority thus conferred is of a high and responsible nature, it is not in the present case to be exercised, except it shall appear to you that all ordinary legal means to prevent the departure of the United States shall have been exhausted. Captain Boarman has been directed to advise with you in whatever he shall have occasion to do in
[180] the *execution of this order.

The President has authorized the present proceeding under the sense of his general obligation to take care that the laws be faithfully executed, and in discharge of his particular obligation to prevent the fitting out within the United States of any hostile expedition against foreign States in amity with the United States; and he cannot in this case entertain any doubt of his duty to interpose, in view of the fact that the parties now stand indicted before the district courts of the United States for the southern district of New York and the eastern district of Pennsylvania, on the charge of being engaged in a military enterprise against the republic of Nicaragua, in the prosecution of which they have chartered the steamer United States.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. JOHN MCKEON,
United States Attorney.

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[181] ** Mr. Cushing, Attorney-General, to the President.*

ATTORNEY-GENERAL'S OFFICE, *August* 9, 1855.

SIR: I have the honor to submit herewith the considerations of law applicable to the enlistment of troops within the United States by the British government, in so far as the facts appearing in documents before me concern the personal action either of the British minister or of the British consuls in the United States.

There is no room for doubt as to the law, municipal or international, regarding the general question.

In the first place, the act of Congress of April 20, 1818, contains the following provision:

SEC. 2. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire, or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered into the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and
[182] be imprisoned *not exceeding three years.—(3 Stat. at Large, p. 448.)

Of course, as the levy of troops within the United States for foreign service is forbidden by law, no such right has, by your permission, been given to Great Britain. To the contrary of this, the British government was expressly notified, by letter of Mr. Marcy to Mr. Crampton, of April 28, 1854, that enlistments in the United States would not be permitted

either to Great Britain or to Russia.—(Ex. Docs. 1st session 33d Congress, vol. xii, No. 103, p. 5.)

In the second place, independently of the municipal relations of the acts in question, they constitute, whether they be the acts of the British government or of its minister and consuls, a violation of the sovereignty and of the neutral rights of the United States.

The rule of public law is unequivocal on this point, and is correctly stated by Wolff to the effect that, since the right of raising soldiers is a right of majesty, which must not be violated by a foreign nation, it is not permitted to raise soldiers in the territories of a state without the consent of its sovereign.—(Jus Gentium, 747–753.)

The following passages of Wolff are translated, as comprehend-
[183] ing the whole question in all its * parts:

Inasmuch as to him who has the right of war belongs the right of enlisting soldiers, consequently the right of enlisting soldiers is intimately connected with the right of war; and as the right of war pertains to the class of rights of sovereignty, the right of enlisting soldiers also pertains to rights of sovereignty.—(Wolff, *Jus Gentium*, s. 747.)

It is not lawful to enlist soldiers in foreign territory without consent of its government. * * Since it is not lawful to enlist soldiers in foreign territory without consent of its government, if any person presume to do so, he violates the law of nations, and wrongs the local sovereignty; and as this wrong is a crime if committed by an alien, and as aliens guilty of crime in a foreign country are punishable according to the local law, hence, if an alien presume to recruit soldiers in a foreign territory without consent of its government, being apprehended, he may be punished.

Whoever recruits troops in a foreign territory against the will of its government, or without the permission obtained, either does it without the knowledge of his own
[184] government, or else by its command or its implied *approbation. In the first case, a crime is committed by the individual recruiter, but no wrong has been done on the part of his sovereign; but, in the latter case, since the sovereign whom the recruiter serves, participates in the crime, that sovereign violates the law of nations, and the wrong done by him is to be distinguished from the crime which the recruiter commits.

It often happens that considerations of policy exist, which induce the injured party in such case to dissemble the international wrong, and, therefore, to punish the municipal offense of the recruiter with more severity, as a warning to others. The abstract right of society to punish crimes is infinite and limited to a particular case only by circumstances, among which undoubtedly is consideration of the degree of punishment adequate to prevent repetition of the offense. Hence, inasmuch as capital punishments are lawful, if crime cannot be repressed without them, it is not to be doubted but that they who undertake to levy troops in foreign territory without permission of its government first obtained may be coerced with capital punishment. It is in the highest degree contrary to the public security that an alien should enter the territory of
[185] a foreign *country and there levy troops at will, whether he abduct the inhabitants by clandestine force or by mendacious persuasions. Of course, it is neither unjust nor harsh to punish this crime by hanging, as it is not unknown to have been provided in some countries.—(*Ibid.*, 753, 754.)

Kidnaping (or man-stealing) is the surreptitious abduction of a man from the authority to which he is subject. * * * It is man-stealing, or kidnaping, for one government surreptitiously to draw away the subjects of another * * * for its military service.—(*Ibid.*, s. 755, 756.)

Whoever, by fraudulent contrivances, surreptitiously draws the subjects of another government into acts of war, outrages the sovereign power of such government. * * * If this be done by command or permission of a foreign government, the latter is responsible for the wrong; that is to say, it is to be understood as a wrong done by nation to nation.

The magnitude of this wrong fails to be comprehended by those who have no idea, or at least not a clear one, of sovereign rights, and especially of eminent power, and who do not, therefore, rightly appreciate the gravity of any foreign violation of
[186] the territorial rights of sovereignty. Even if the *local sovereign have no jurisdiction over the foreigner, still the latter is not for that cause to violate at will rights which are of the sole competency of the local sovereign. If it were otherwise, we should have to concede that any man may do what he pleases against the rights of another if he be not subject to the latter's authority. How absurd this would be, and how diametrically opposed to natural right, no man can fail to see unless he labors under gross ignorance of all natural right, and has become destitute of all common sense of what he would not have others do to himself. And, for this reason, it is not

presumed of any government that surreptitious enlistments for its military service have been carried on in a foreign country with its will, unless that will manifestly appear, or the verified fact shall overcome the contrary presumption. Meanwhile, although the foreign agents who carry on surreptitious recruiting in a country perpetuate this man-stealing by their own sovereign's authority, they are not the less amenable to animadversion, for they ought not to have obeyed commands of
[187] their sovereign which were against natural right, since malefaction *does not cease to be such because perpetuated by command of a superior, nor will the excuse of unlawful obedience to another convert into right what is acquired by malefaction.

Since a government inflicts national wrong on another, if by its order or permission the personal or material instruments of war be stolen from the latter for belligerent use, such acts are a just cause of war. * * * *

It is not intended to say that whenever the instruments of war, personal or material, have been surreptitiously procured for belligerent use, either by command or by consent of the sovereign in whose behalf it is done, therefore the injured government must of necessity declare war, but only that it may well be received among the justificatory causes of war.

Nor is the cause of war removed, if the guilty agents of the crime shall happen to have been punished. They indeed have suffered the just penalty of the crime they committed: but that does not satisfy the wrong done to the national sovereignty.—(*Ibid.*, s. 758, 759.)

The same ideas are found in Vattel; but he need not be quoted at length, as he does but copy or abridge Wolff.

Kluber says:

[188] *A state entirely neutral has the right to exact, even by force, if necessary, that belligerent powers do not use its neutral territory for the purposes of war; that they do not take there arms, munitions of war, and provisions and other immediate requirements of war, for their armies; *that they do not make there any military armaments, either enrollments or collections of troops;* that none of their troops, armed or unarmed, pass through, &c., &c.; that they exercise there no act of hostility against the persons or property of the subjects of the hostile state; that they do not occupy it militarily, or make it the theater of war.—(*Droit des Gens moderne de l'Europe*, s. 585.)

G. F. de Martens says:

While, in case of rupture between two nations, a neutral state preserves the full enjoyment of its territorial rights, it can, in the absence of treaties, prohibit during the war, as in time of peace, any passage or sojourn of foreign troops, and much more forbid the occupation of its fortresses, *the recruiting*, mustering, and exercising *troops;* and it may use force against those who shall attempt to violate the prohibition.—(*Précis du Droit des Gens*, s. 30.)

Galiani says:

[189] All governments are *accustomed to prohibit, under capital penalty, any foreigner to make military engagements or *recruits within their territory;* in doing which they do no more than to sustain and defend a natural right, and one inherent in every sovereignty.—(*Dei Doveri de' Principi Neutrali*, p. 325.)

The sovereign, who leaves his subjects at liberty to engage themselves in the service of a foreign belligerent, will not therein be wanting to his neutral duties, provided it has been customary with his nation; if it has been usual in time of peace; if it accords with the physical and political condition of the country; if, in fine, he practices indifference and impartiality, not denying to one belligerent what he concedes to the other. But, if a sovereign has not been accustomed to allow his subjects to enlist in the military or naval service of other governments, it may well be doubted whether he may, for the first time, do it on the occurrence of war between two states, each of which is in amity with him. I am not prepared to say that in doing so he gives equality of advantage and facilities to both; there might be inequality in the need of the belligerents; for, perhaps, *one of them, suffering from deficiency of men, would derive*
[190] *precious and powerful succor from such permission, while to the *other it would be useless and superfluous.* In my opinion, therefore, this question comes within the general rule of essential neutral duties; that is, to continue in the anterior condition, it being lawful to persevere in what has been usual, but unlawful to innovate.—(*Ibid.*, p. 329.)

Hautefeuille says:

The duties of belligerents may be summed up in very few words. The belligerent ought to abstain from the employment of all such indirect means to molest his enemy as, in the accomplishment of their object, would first injuriously affect a neutral

nation. He ought to respect, in the most complete and absolute manner, the independence and sovereignty of nations at peace; in a word, he ought to treat them in the same manner as if the most profound peace continued to prevail. Those nations, in fact, are at peace with him, fulfilling strictly their duties of neutrality; they have the right to enjoy the advantages of their position, and to be exempt from all the evils of war; the duty of the belligerent is to abstain from the infringement of this right. Thus, neutral territory ought to be held sacred and inviolable by nations at war; these last ought not, on any pretext, nor in any manner, to make use of such territory to
[191] subserve their purposes *of hostilities, directly or indirectly. The passage of armed troops, *the levying of soldiers*, &c., &c., without the consent of the sovereign, would constitute an offense against the sovereignty of the neutral, and a violation of the duty of the belligerent.—(*Droits et Devoirs des Nations Neutres*, tom. i, 312, 313.)

As to the territory of neutral nations, the occurrence of hostilities makes no change nor modification of their rights; they remain inviolable as in time of peace. Their territory ought, then, to be sheltered from all enterprises of belligerents, of whatever nature they may be. The consequences of war ought never to be felt by them directly; that is to say, no act of hostility should be committed against them, under any pretext.

Belligerent nations, in this respect, have only the rights they possessed in time of peace, because war never injuriously affects nations at peace. Belligerents cannot, then, in any case, without the permission of the sovereign, use neutral territory, I do not say directly, for the operations of war; but cannot even make use of it for any advantage whatever, to the prejudice of their enemy. This permission cannot be granted to them by the neutral without violating his duties.

[192] The principle of the inviolability of the territory *being admitted, the conclusion, as absolute as the principle itself, follows: that a belligerent has no right to use neutral territory, in any manner whatever, without the permission of the neutral nation, sovereign of such territory; and cannot, therefore, *levy troops there*, and march armies through it, &c., without this permission.

The neutral has the incontestable right to resist every attempt the belligerent may make to use his territory; to oppose it by all the means in his power, and even by force of arms, in the same manner as a citizen has the right to defend his property by all the means placed at his disposal by the law to which he is subject.—(*Ibid.*, tom. ii, pp. 48, 49.)

By Riquelme:

It is also a violation of the rights of neutrality to entice enlistments in the neutral state, without the authorization of its government; because the right to levy troops is inherent in the national sovereignty. But, on the other hand, a government which grants this authority ceases to be neutral, because it supplies to one of the belligerents the principal element of war.—(*Derecho Publico Internacional*, tom. i, p. 144.)

Citations to the same effect might be multiplied from the works
[193] of the jurists of *continental Europe.

I do not perceive that this doctrine is explicitly produced in any of the books of international law published during the last few years in Great Britain. Possibly their silence on this point may be caused by the policy of their country, which, under the kings of the house of Hanover, has frequently relied upon foreign recruits in time of war. However this may be, some of the English works referred to recognize the right of every sovereignty to the supreme use of its own territory and resources, (Wildman's International Law, vol. i, p. 64,) but without adverting to the present logical consequences of this right. At least, one of them discusses fully the collateral question whether a state loses its neutrality by permitting foreign levies, and concludes, properly, that if it be permitted to one it should be permitted to each of the respective belligerent powers.—(Manning's Law of Nations, vol. iii, ch. i.)

In this connection the same accredited English writer considers and confutes the assumption, crudely and erroneously taken up in Great Britain, that some doctrine to the contrary of this is to be found in Vattel.—(Pendergast, Army Law, p. 44; *idem.*, Navy Law, vol. i, p. 131.)

[194] *The truth is that Vattel, as already stated, maintains unequivocally the doctrine that there can be no foreign recruiting in a country without the consent of its government. He says expressly

that all such unlicensed foreign recruiters are *kidnapers*, and justly "punished with the utmost severity in every well-regulated state."—(*Droit des Gens.*, liv. iii, ch. 2, s. 15.) Nay, he admits the general rule that the neutral should not furnish assistance to either belligerent.—(*Ibid.*, liv. iii, ch. 7, s. 110.) But Vattel was a Swiss, of Neufchâtel, and he labored, in this matter, under the patriotic necessity of extenuating, as he best might, the ignominious capitulations of the Swiss cantons for the supply of mercenary troops to the other states of Europe. But, in this case, he has enough of conscientiousness to say that there must be strict impartiality, or at least contracts of service anterior to the war.

Mr. Manning, in an elaborate review of the whole subject, concludes thus:

> Foreign levies may not be allowed to one belligerent while refused to his antagonist, consistently with the duties of neutrality. When treaties, *antecedent* to war, permit such exclusive privilege, then * * * no complaint of breach of neutrality can be maintained by the excluded party. But when no antecedent treaty exists such
> [195] a permission would be a violation of neutrality, the principles of which demand the strictest abstinence from assistance to either party, and, of course, will not admit that exclusive privileges, in so important a particular, should be granted to one belligerent. Nor have the customs of Europe, derived from the practices of the middle ages, established any usage that prevents this question from being settled in accordance with the dictates of reason, or, in other words, with the law of nature.—(Manning, *ut supra*, p. 180.)

Mr. Manning's reasoning is conclusive so far as it goes. And the imperfection of other English law-books in this respect is of no account, as against the general authority of the expounders of international law in all the rest of Christendom.

Misconstruction has also been placed on the fact that Bynkershoek maintains the right of private or voluntary expatriation, even for the purpose of foreign military service. But he does not express nor countenance the thought that a foreign belligerent may recruit soldiers in a neutral country without the consent of its sovereign. On the contrary,

> he exhibits in full the legislation of the United Provinces, accord-
> [196] ing to which it was a capital offense to make *enlistments in the country without the consent of the States-General.—(*Quæst. Jur. Publici*, lib. i, c. 22.)

Besides, Great Britain has, in her own legislation, sanctioned and adopted the rule of public law, by enacting that if any person whatever, within the United Kingdom, or in any part of the dominions of Great Britain, shall hire, engage, retain, or procure, or shall attempt or endeavor to hire, retain, engage, or procure any person whatever to enlist, as an officer, soldier, sailor, or marine, either on land or sea service, for or under or in aid of any foreign prince or government, or to go or to agree to go or embark from any place in the British dominions for the purpose or with the intent to be so enlisted, entered, or engaged, as aforesaid, every person so offending shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, at the discretion of the court having jurisdiction of the act.—(Act of 59 Geo. III, ch. 69.)

We, in the United States, acting in the sense of natural right, and following the rules of public law as explained by the jurists of continental Europe, asserted and established this doctrine at a very early

> period, in opposition to the undertaking of the French government,
> [197] through *its minister, M. Genet, to man or equip cruisers within the United States.—(Mr. Jefferson to M. Genet, June 17, 1793. American State Papers, Foreign Affairs, vol. i, p. 154.)

And our judicial text-books are full and explicit on the same point.—(Wheaton, by Lawrence, p. 498; Kent's Com., lec. 6.)

It is obvious to the most superficial reflection, that no distinction of principle exists in the levy of a military force in the neutral country, as between the land and sea service; and if Great Britain may raise within the United States volunteers for her land service, so Russia may raise them for her marine service, that is, may fit out privateers in our ports; and, indeed, if we grant or permit the former privilege to Great Britain, we must, in like manner, in order to be impartially neutral, concede the latter privilege to Russia.

And it is equally obvious that foreign recruiting must not be forbidden or permitted under the influence of any assumed national sympathies or antipathies. Individual or national preferences are quite immaterial in such a question. The United States cannot, either lawfully or honorably, practice a simulated neutrality; nor can a dissembled alliance be claimed or *expected from us, either by Great [198] Britain or by Russia.

From the well-established rules and principles of law, then, it is plain to conclude:

1. The acts of enlistment in question are contrary to the municipal law of this country, and indictable as a high misdemeanor.

2. Those acts, if permitted to one belligerent, must be permitted to all, in observance of impartial neutrality.

3. Being against law in the United States, and therefore not permitted to Great Britain, if undertaken by her as a government, they afford just cause of war, being direct national violation of the territorial sovereignty of one nation by another.

4. Whatever agents of the British government, whether official or unofficial, acting voluntarily or by orders, have participated in such acts, are not only guilty of a criminal infraction of the statute law, but, also, in the language of Vattel, of violating one of the most sacred rights of the nation.

I presume that if, in the present case, the British minister imagines that the acts performed under his direction were not contrary to the municipal law, it must be on the ground that the recruits were [199] not completely enlisted in *the United States; that is, did not here in all form enter the military service of Great Britain. That assumption is altogether fallacious. The statute is express, that if any person shall hire or *retain* another person *to go beyond the limits* or jurisdiction of the United States, *with intent* to be enlisted or entered into the service of any foreign state, he shall be deemed guilty of the defined misdemeanor.

It is possible, also, that he may have supposed that a solemn contract of hiring in the United States is necessary to constitute the offense. That would be mere delusion. The words of the statute are "hire or retain." It is true, our act of Congress does not expressly say, as the British act of Parliament does, "whether any enlistment money, pay, or reward shall have been given and received or not," (Act 59 Geo. III, ch. 69, s. 2;) nor was it necessary to insert these words. A party may be retained by verbal promise, or by invitation, for a decared or known purpose. If such a statute could be evaded or set at naught by elaborate contrivances to engage without enlisting, to retain without hiring, to invite without recruiting, to pay recruiting money in fact, but under another name of board, passage-money, expenses, or the like, it [200] would be *idle to pass acts of Congress for the punishment of this or any other offence.

However this may be, and if such were the thought of the British government, it has not been succesfully carried out; for, on the evi-

dence before me, including the general instructions of the British minister and his direct correspondence with recruiting-officers in the United States and others, my opinion is positive that the parties have made themselves amenable to the penalties of the statute, and may be convicted before any competent court of the United States.

It is further to be observed, in conclusion of this branch of the subject, that, whether the acts of the British minister and his agents, in recruiting troops within the United States, do or do not come within the technical provisions of the acts of Congress, is altogether immaterial to international right, as between this Government and that of Great Britain. If, by ingenious evasions of the letter of a penal statute intended only for private malefactors, the British government should, nevertheless, levy troops here, the fact of the statute being thus defeated and trampled under foot would serve only to augment the public wrong.

[201] *Suppose, for instance, that the British government shall have said to its officers, civil or military, in the British North American Provinces, and to its diplomatic or consular agents in the United States, "you will proceed to raise so many men in the United States; but remember that to do so is forbidden by the municipal law of that country, and is indictable as a misdemeanor; you will, therefore, take care to proceed cunningly in this, so as not to incur the penalties of the statute." Such instructions, while they might have the effect of raising the troops, as desired by the British government, without its agents incurring the penalties of the statute, would but constitute a more flagrant and aggravated violation of the national dignity and the sovereign rights of the United States.

Suppose a foreign government, by circular instructions to its diplomatic and consular agents in the United States, instructs them to organize a system for evading the revenue laws of the country. In such case would the international injury be any less if the contemplated evasions should be successfully perpetrated? Or, if the government of an adjoining country send hither agents, under the immediate

[202] superintendence of its minister, to *counterfeit the coin, circulate base coin, steal, rob, or commit any other offense, with depots on our frontier to facilitate the commission of the crime and utilize its proceeds: Should we be satisfied with the reply, that in all this our laws had been successfully evaded by the careful instructions and ingenious devices of the foreign government and its public functionaries in the United States?

Beyond all this, it would seem that the legal advisers of the British government conceive that the official agents of one nation may rightfully do, within the territory of another, anything which is not by the domestic statutes of the latter declared to be a municipal offense, indictable as such before the courts of law. If such an idea be entertained by the British government or its law-officers, certainly it is a mere delusion, possible to exist only in minds shut up in the narrow sphere of the technical common law of England.

How *insular* that law is, and how defective the knowledge it imparts even for the purpose of domestic, and still more of foreign, administration, the jurists of England themselves have too frequently had cause to observe.—(See, *ex. gr.*, Phillimore's Internat. Law, pref., p. xi; Chitty's Prac., pref., p. v, note.)

[203] Nothing can be plainer than the position that the objects of the municipal law in such a case are domestic only. In constitutional governments it confers on the executive in the particular matter powers

which he would not otherwise possess, and it provides the means of repressing all acts of individual persons, whether foreign agents or not, which may contravene the policy or infringe the rights of the country. But the municipal law cannot reach the foreign sovereignty, by whose orders the individuals in question, if public agents, act in violation of the local sovereignty. Yet, is not the foreign sovereign, as sovereign, the chief wrong-doer? And is the wrong to be redressed in no way except by punishing the subordinate agents of the wrong, if there happen to be any municipal law to reach the case? And if there be no such law, is the injury to go unredressed? Clearly not, for governments in their international acts are directly responsible to governments.

But the radical absurdity is in assuming that a foreign government may lawfully do on the territory of another government, or cause to be done, anything whatever, which is not made penal by local statutes. This assumption is altogether groundless. The law of nations is [204] *international, not domestic or municipal; it is the *ensemble* of international conventions, usages, and received opinions, aided, in case of need, by the doctrines of abstract justice and of universal reason. It is not restricted to the bounds of acts of Parliament or acts of Congress. International right would be reduced to a singular condition indeed if it consisted of those things, and those things only, which, for consideration of internal convenience, Great Britain or the United States may have happened to enact as law by means of their legislative assemblies. It is not so, either affirmatively or negatively. Things are affirmed in their statutes which are not according to the law of nations; and there are many points of international law which have not been affirmed by their statutes. A single pertinent illustration of the latter will suffice.

There are two matters of sovereign right which are alike in character, and are naturally associated in the writings of international jurists, namely, the right to prevent either the transit of foreign troops or the enlistment of soldiers for foreign service. In Great Britain and the United States we have municipal laws to repress and to punish [205] the individual agents, official *or unofficial, of the latter invasion of our sovereign rights; but none to punish or even to repress the former. May it, therefore, be done with impunity? Nay, can it be done without national offense? It may, according to the premises assumed in the other case. If all acts of foreign enlistment may be rightfully done, provided there be no prohibitory statute, and if there be any, then all such as the statute does not reach—of course all acts of foreign military transit may be rightfully performed, and there is the end of the sovereignty of every nation, which does not happen, like Great Britain, to be surrounded by water.

In truth, the statute in all these matters is of but secondary account. The main consideration is the sovereign right of the United States to exercise complete and exclusive jurisdiction within their own territory; to remain strictly neutral, if they please, in the face of the warring nations of Europe; and, of course, not to tolerate enlistments in the country by either of belligerents, whether for land or sea service. If there be local statutes to punish the agents or parties to such enlistments it is well; but that is a domestic question for our consideration, and [206] does not regard any foreign government. All *which it concerns a foreign government to know is, whether we, as a government, permit such enlistments. It is bound to ask permission of us before coming into our own territory to raise troops for its own service. It has no business to inquire whether there be statutes on the subject or not.

Least of all has it the right to take notice of the statutes only to see how it may devise means by which to evade them. Instead of this it is bound, not only by every consideration of international comity, but of the strictest international law, to respect the sovereignty and regard the public policy of the United States.

Accordingly, when, at the commencement of the great European struggle between England and France, near the close of the last century, the French government assumed to recruit marine forces in the United States, it was held by President Washington, and by his Secretary of State, Mr. Jefferson, as explained in the correspondence hereinbefore quoted, that by the law of nations, in virtue of our sovereignty, and without stopping to enact municipal laws on the subject, we had full right to repress and repel foreign enlistments, and, *e converso*, that the attempt to make
[207] any such enlistments was an act of gross *national aggression on the United States.

When a foreign government, by its agents, enters into the United States to perform acts in violation of our sovereignty, and contrary to our public policy, though acts not made penal by municipal law, that is a grave national indignity and wrong. If, in addition to this, such foreign government, knowing that penal statutes on the subject exist, deliberately undertakes to evade the municipal law, and thus to baffle and bring into disrepute the international administration of the country, in such case the foreign government not only violates but insults our national sovereignty.

I repeat, then, that, if it were to be supposed that the British government had so far forgotten what is due to its own dignity, as to instruct its agents within the territories of the German Bund, in the Netherlands, in the United States, to enlist recruits without respect for local sovereignty, but with care to avoid or evade the letter of local statutes, instead of diminishing, that would aggravate the injustice and illegality of the proceeding in the eye of the law of nations, and the intensity of the public wrong as regards the neutral states thus
[208] converted, without their consent, into a *recruiting ground for the armies of Great Britain.

Such instructions would be derogatory to our public honor in another respect. They presume that the United States, without becoming the open ally of Great Britain, will, by conniving at the use of their territory for belligerent purposes, while professing neutrality, thus carry on, as already intimated, a dishonorable war in disguise against Russia.

It appears, however, that the British government, finding it impossible to keep the ranks of its army filled by voluntary enlistments, and being loath to encounter the responsibility of a law for conscription, for drafts on militia, for periodical service of its able-bodied men, or for any other systematic method of raising troops from its own population, introduced into Parliament a bill entitled "An act to permit foreigners to be enlisted, and to serve as officers and soldiers in Her Majesty's forces," but which was in fact a bill to authorize the government to employ agents to carry on recruiting service in the neutral states of Europe and America.

The law was earnestly objected to in its progress as insulting to neutral states and derogatory to the national dignity, but was passed,
[209] *nevertheless, on the 22d of December, 1854.—(Hansard's Debates, third series, vol. 136, *passim*.)

At an early day after the passage of this act measures were taken to recruit officers and men for a proposed foreign legion in the United States, those measures being publicly pursued under the official respon-

sibility of Sir Gaspard le Marchant, lieutenant-governor of the province of Nova Scotia. A military depot was established at Halifax for the reception and enrollment of recruits; and Mr. Howe, a member of the provincial government, with other agents, came into the United States to make arrangements for engaging and forwarding the recruits, chiefly from Boston, New York, and Philadelphia. Subsequently, corresponding arrangements were made for collecting and forwarding recruits from the Western States, by Buffalo or Niagara, through Upper Canada.

These acts were commenced and prosecuted with printed handbills and other means of advertisement, and recruits were collected in depots at New York and elsewhere, and regularly transported to Canada or Nova Scotia, with undisguised notoriety, as if the United States were still a constituent part of the British empire. Of course, they
[210] attracted great attention, and the * various measures, whether legal or political, proper to put a stop to them were instituted by your direction, through the instrumentality of the foreign or legal departments of the Government of the United States.

In the course of the investigations which ensued, among the facts brought to light are some, in the documents referred to me, which unequivocally implicate not only the British consuls but the British minister himself in the unlawful transactions in question, and so call for inquiry as to the rights of this Government in reference to them and their government.

In the application of the general rules of law to the offenses committed, it is necessary to distinguish between the case of any of the consuls and that of the minister.

The several district attorneys of the United States within whose jurisdiction, respectively, the cases occurred very properly assumed that the consuls were subject to indictment for infraction of the municipal law, and have proceeded accordingly, prosecutions having already been instituted in the southern district of Ohio against the consul at
[211] Cincinnati, and in the southern district of New York * against an officer of the consulate of New York.

Nothing is better settled by adjudication in this country than that foreign consuls are subject to criminal process for violation of the municipal laws.—(United States *vs.* Ravara, 2 Dall., 297; Mannhardt *vs.* Soderstrom, 1 Bin., 144; Commonwealth *vs.* Kosloff, 1 Serg. & R., 545; State *vs.* De la Foret, 2 Nott and Mc., 217.)

These adjudications are in exact conformity with the law of nations in regard to consuls, as understood and practiced not less in Great Britain than in the other states of Christendom.—(See *ante*, p. 18; also Kent's Com., vol. i, p. 44; Wheaton's Ed. by Lawrence, 305.)

The only privilege which a consul enjoys in this respect in the United States is that awarded to him by the Constitution, of being tried by the Federal courts; the effect of which is, that his case remains within the control of the General Government, which may deal with it according to the convenience or the exigencies of its foreign policy, without impediment from the authority of any of the individual States of the Union.—(Const., art. iii, sec. 2; act of September 24, 1789, sec. 9, 1 Stat. at Large, p. 77.)

The consul at Cincinnati, as appears by the legal proceeding
[212] there, supposes that he is *entitled to the benefits of certain peculiar stipulations in the consular convention between the United States and France of February 23, 1853. If it were so, that would not serve him on the main point, because it does not exempt consuls from the criminal jurisdiction of either of the contracting governments. But

this convention has no application whatever to the consular relations of Great Britain and the United States. Whether it applies or not to governments with which we have entered into stipulations to place our respective consuls on the footing of the most favored nation, is a question as yet unsettled. But there is no stipulation of that nature in existence, as between Great Britain and the United States. Of course, the duties and the rights of American consuls in Great Britain, and of British consuls in the United States, stand upon the law of nations, except as the same is modified by their treaties and by the local law of either country. The local law of each, as we have seen, withholds from consuls the diplomatic privilege of exterritoriality. A British consul, therefore, has no just cause of complaint if, when charged with an offense, he is held amenable to the criminal jurisdiction of the United States.

[213] In addition to those ordinary means of redress *in the case of the misconduct of a foreign consul, is that afforded by the law of nations. The President of the United States has the undoubted power, in his discretion, to withdraw the exequatur of any foreign consul. To justify the exercise of this power, he does not need the fact of a technical violation of a law judicially proved. He may exercise it for any reasonable cause, whenever, in his judgment, it is called for by the interests or the honor of the United States.--(De Clercq, *Guide des Consulates*, p. 101.)

On each of these points provision was made in the commercial convention between the United States and Great Britain of July 3, 1815, which stipulates that "before any consul (in either country) shall act as such, he shall, in the usual form, be approved and admitted by the government to which he is sent; and * * in case of illegal or improper conduct toward the laws of the government of the country to which he is sent, such consul may either be punished according to law, if the law will reach the case, or be sent back; the offended government assigning to the other the reasons for the same."—(Article IV.)

This convention, by its terms, was to subsist only four years. By [214] a subsequent convention, *that of October 20, 1818, its duration was prorogued ten years, (Article IV,) and afterward, by the convention of August 6, 1827, for another ten years, and until denounced by either party on twelve months' notice.

For the rest, the stipulations of the convention of 1815, as continued by the conventions of 1818 and 1827, are but declaratory of the law of nations, as that is understood both in Great Britain and the United States.

In regard to the minister, it is clear, if he violate the laws of the government to which he is accredited, or otherwise offend its sovereignty, there is no remedy except in the manner and form prescribed by the law of nations. He enjoys exemption from judicial process, which immunity is not so much his right as that of his government.

It was formerly held in England, as we see in March's case, reported by Rolle, in the time of James I, that, "although an embassador is privileged by the law of nature and of nations, yet, if he commit any offense against the law of nature or reason, he shall lose his privilege, but not if he offend against a positive law of any realm."—(Rolle's R., p. 175.) No such distinction between *mala prohibita* and *mala in se*, as [215] respects embassadors, is now admitted, and their exterritoriality is the *unanimous doctrine of all publicists, and is recognized in England, as it is in the United States, by statute.

The whole question is learnedly discussed by Wildman, whose views

are in accordance with those of Grotius and Bynkershoek, which now prevail throughout Christendom.—(Institutes, vol. 1, p. 90.)

But the privilege of exterritoriality is not conferred on a public minister as a shield to crime. For any crimes which he may commit the remedy varies according to the nature of the case.

As to offenses against the municipal law of the country, committed by a foreign minister, or other person entitled to the privilege of diplomatic exterritoriality, we have a statute which declares that any writ or process against them, issued by any court, is utterly null and void.—(Act of April 30, 1790, sec. 25, 1 Stat. at Large, p. 117.) And this immunity of public ministers has been the subject of judicial recognition in several instances. (See United States *vs.* Hand, 2 Wash. C. C. R., 435; United States *vs.* Liddle, *ibid.*, p. 205; *ex parte* Cabrera, *ibid.*, p. 232. See also Wheaton by Lawrence, p. 284; Kent's Com., vol. 1, p. 38; Opinion of Mr. Attorney-General Lee, of July 27, 1797.)

The cases of criminality on the part of a public minister may be
[216] distinguished into the *following classes:

1st. If the crime committed by the minister affect individuals only, (*delict. privata,*) the government of the country is to demand his recall; and if his government refuse to recall him, the government of the country may either expel him by force or bring him to trial as no longer entitled to the immunities of a minister.—(Kluber, *Droit des Gens*, sec. 211; Ch. de Martens, *Guide Diplomatique*, tom. 1, p. 88.)

2d. If the crime affect the public safety of the country its government may, for urgent cause, either seize and hold his person until the danger be passed, or expel him from the country by force; for the safety of the state, which is superior to other considerations, is not to be periled by overstrained regard for the privileges of an embassador.—(*Ibid.;* see also Kent, vol. 1, p. 38; Schooner Exchange *vs.* McFadden, 7 Cranch, 116–139.) Indeed, it has been held in such a case in England that the offending party may be proceeded against for treason. "If," it is affirmed in the case of Rex *vs.* Owen, "an embassador compass and intend death to the King's person in the land where he is, he may be condemned and executed for treason."—(Rex *vs.* Owen, Rolle's R.,
[217] p. 188.) But that dictum is not in concord with precedents, *which, in general, go no further than the arrest and confinement and the eventual or the immediate expulsion of a public minister for treasonable acts or acts dangerous to the security of the state.

Signal instances of the arrest or summary expulsion of public ministers in such a case are collected by Bynkershoek, by Wicquefort, by Wildman, and by Charles de Martens. (*Causes Célèbres.*)

A very modern case of great notoriety is that of Sir Henry Bulwer, who, while British minister at Madrid during the administration of the Duke of Valencia, (General Narvaez,) being detected in complicity with domestic revolutionists, was, after his recall had been respectfully requested of the British government and refused by it, required by letter of the Duke of Sotomayor, the Spanish minister of foreign affairs, to quit Spain immediately, and did so.—(Hernandez, *España y el Vizconde Palmerston*, Madrid, 1848.)

The incident occasioned a brief interruption of the diplomatic relations of the two governments; but Spain stood firm; and, as Sir Henry Bulwer had acted under the instructions of Lord Palmerston, the British minister of foreign affairs, the British government, after some delay and the exchange of explanations, conscious that it had been
[218] placed in the wrong by Lord Palmerston, *submitted to send a new minister to Madrid.—(Hansard's Debates, third series, vol. 99, p. 347.)

3d. Finally, if the offense be grave, but not such as to compromise the public safety, the course of proceeding in accordance with the law of nations, and sanctioned by diplomatic usage, is to demand the recall of the minister, and meanwhile to refuse, or not, all further intercourse with him, according to the circumstances.

The United States have pursued this course in several instances, of which a memorable one, and exactly pertinent to the present case, is the demand on France for the recall of M. Genet, guilty of enlistments in this country without the consent of its Government.—(Am. State Papers, For. Af., vol. 1, No. 65.)

The public law and usage in this respect are well stated by a modern English author, who says:

> With respect to the dismissal of ministers, it is usual, where the matter admits of delay, first to demand his recall. * * But this is a mere act of courtesy, which cannot be expected on occasions of imminent peril. The dismissal of an embassador on such occasions is not an assumption of jurisdiction, but a measure of self-defense, which no one has ever denied to be legal in the case of embassadors. * * If [219] an *embassador use force he may be repelled by force. * * When the danger is imminent, an embassador may be seized as a public enemy, may be imprisoned, may be put to death, if it be indispensably necessary to our safety.—(Wildman, *Institutes*, vol. 1, p. 114.)

On the whole, the case of the British minister, regarded in the light of established rules of the law of nations and diplomatic usage founded thereon, would seem to resolve itself into, first, a question of strict right; and, secondly, of discretion in the exercise of that right.

It clearly is not a case affecting the security of the state, and thus needing or justifying the interposition of summary authority, as in the instance of the Prince of Cellamare in France, (Ch. de Martens, *Causes Célèbres*, tom. 1, p. 139,) Count Gyllenberg in Great Britain, (Foster's Crown Law, p. 187,) and many other cases of historical and legal notoriety or interest. No acts of violence are imputed to the British minister, nor any purpose or fact threatening to the national stability of the United States. What is charged against him is conduct improper in a public minister, illegal as respects the municipal law, injurious to the national sovereignty. If sufficiently shown, it re- [220] quires to be repressed *in such a manner as effectively to vindicate the public honor. Of strict right the President may, as the Queen of Spain did in the case of Sir Henry Bulwer, send his passports to the British minister, with intimation to leave the country without delay; or he may well, in his discretion, adopt the milder course, as President Washington did in the case of M. Genet; that is, after affording to the British minister opportunity of explanation through the Secretary of State, then, if his explanation be not satisfactory, to demand his recall of the Queen's government. The personal esteem which the British minister justly enjoys here in other respects might counsel the latter course, more especially if the British government, assuming the responsibility of his acts, should thereupon proceed to tender, in its own name, complete and ample satisfaction for having authorized or permitted such a flagrant wrong as the systematic attempt to recruit a military force in the United States by the instrumentality of the lieutenant-governor of Nova Scotia.

I have the honor to be, very respectfully,

C. CUSHING.

The PRESIDENT.

[221] **Mr. Cushing to Mr. McClelland, Secretary of the Interior.*

ATTORNEY-GENERAL'S OFFICE,
August 24, 1855.

SIR: Your letters of the 2d and 15th instant refer to me for consideration certain accounts of expense incurred in watching the steamers United States and Ocean Wave in the port of New York.

It appears that these services were performed in execution of orders duly and lawfully given by the President, through the customary and proper channel of the State Department, to prevent the departure of the steamers in question, they having been chartered by Henry L. Kinney and Joseph W. Fabens for an alleged military expedition against the republic of Nicaragua, undertaken in violation of an act of Congress.—(3 Stat. at Large, pp. 447-449.)

It is undeniable, therefore, that, assuming the service charged for to have been performed by these parties as charged, reasonable compensation therefor is due them on the part of the United States.

Before examination of the accounts is entered upon, however, it is necessary to determine to what department jurisdiction of the subject belongs.

I think you have rightly conceived that the accounts are not of matters chargeable by their nature to the appropriations for judicial
[222] *expenditures, and, therefore, not of the resort of the home department.

Inasmuch as the orders for the service emanated from the Department of State, and were issued for the maintenance of the neutrality of the United States, it seems very clear to me that the accounts are chargeable to appropriate funds placed by law at the disposal of the Secretary of State for objects of foreign relation.

I have therefore inclosed the papers, with a copy of this opinion, to the Secretary of State.

I am, very respectfully,

C. CUSHING.

Hon. ROBERT MCCLELLAND,
Secretary of the Interior.

[223] **Mr. Cushing, Attorney-General, to Mr. McKeon, district attorney.*

ATTORNEY-GENERAL'S OFFICE,
September 10, 1855.

SIR: I have the honor to inclose herewith a copy of a dispatch from the British minister to the Secretary of State, and of letters annexed, alleging that troops have been recruited in New York by the Accessory Transit Company for service in the state of Nicaragua, and to request you to investigate the fact, and if, on such investigation, it shall appear that any such recruitments have been made in violation of law, then to institute criminal proceedings against the parties concerned.

I am, yours, &c., &c.,

C. CUSHING.

Hon. JOHN MCKEON,
Attorney United States, New York.

Mr. Cushing, Attorney-General, to Mr. Van Dyke, United States attorney, Philadelphia.

ATTORNEY-GENERAL'S OFFICE,
September 12, 1855.

SIR: In reply to your letter of the 10th instant, on the subject of the indictments pending against persons charged with recruiting for the military service of Great Britain, I have the honor to make the following observations:

Mr. McKeon has been advised of the desirableness of conferring with you personally, either by himself or his assistant, in regard [224] to new *evidence, to which he may have access, and which can be useful to you.

I suggest the propriety of trying only *a part* of the cases now, especially if you fail to convict in some leading case. But the most important consideration is this:

This Government has, of course, addressed to that of Great Britain such demands of public redress and satisfaction in the premises as the national honor requires. But the government of Great Britain, with extraordinary inattention to the grave aspect of its acts, namely, the flagrant violation of our sovereign rights involved in them, has supposed it a sufficient justification of what it has done to reply that it gave instructions to its agents so to proceed as not to infringe our municipal laws, and it quotes the remarks of Judge Kane in support of the idea that it has succeeded in this purpose. It may be so. Judge Kane is an upright and intelligent judge, and will pronounce the law as it is, without fear or favor. But if the British government has, by ingenious contrivances, succeeded in sheltering its agents from conviction as malefactors, it has, in so doing, doubled the magnitude of the national wrong inflicted on the United States.

[225] *This Government has done its duty of internal administration in prosecuting the individuals engaged in these acts. If they are acquitted by reason of a deliberate undertaking of the British government, not only to violate, as a nation, our sovereign rights as a nation, but also to evade our municipal laws, and that undertaking shall be consummated by its agents in the United States; when all this shall have been judicially ascertained the President will then have before him the elements of decision as to what international action it becomes the United States to adopt in so important a matter.

I am, very respectfully,

C. CUSHING.

JAMES C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

Mr. Cushing, Attorney-General, to Mr. Van Dyke, United States attorney, Philadelphia.

ATTORNEY-GENERAL'S OFFICE,
September 17, 1855.

SIR: I desire to make a further suggestion in regard to the trial of parties charged with recruiting soldiers in the United States for the service of the British government.

It is known that instructions on this subject were given by that gov-

ernment to its officers in the United States. We are told by Lord
[226] Clarendon that those officers had "stringent instructions" so to *proceed as not to violate the municipal law, that is, to violate its spirit, but not its letter. If so, the instructions themselves violate the sovereign rights of the United States.

But in the mean time every consul of Great Britain in the United States is, by the avowal of his government, subject to the just suspicion of breach of law; while, apparently, he must either have disobeyed his own government or, in obeying it, have abused his consular functions by the violation of his international duty to the United States.

In these circumstances it is deemed highly necessary that the British consul at Philadelphia, or any other officer of the British government, shall not be suffered to interfere in the trials, as he attempted to do on a previous occasion; that no letter of his be read, except in the due form of evidence; and that if he have anything to say he shall be put on the stand by the defense, in order that he may be fully cross-examined by the prosecution.

It is clear that he has no right, by any rule of public law, or of international comity, to be heard in the case by the court otherwise than as a witness, whether enforced or volunteer.

I have the honor to be, very respectfully,

C. CUSHING.

JAMES C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

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[227] *UNITED STATES OF AMERICA
vs.
HENRY HERTZ AND EMANUAL C. PERKINS, charged with hiring and retaining persons to go beyond the jurisdiction of the United States, with the intent to enlist in the British foreign legion for the Crimea.

District court of the United States, eastern district of Pennsylvania.

SEPTEMBER 21, 1855.—Before the Honorable John K. Kane. The defendants were arraigned on several bills of indictment, to which they severally pleaded not guilty.

Here follow the names of the jurors.

The indictments were similar in their character, and related to the hiring of different persons.

The following is a copy of one of the indictments:

In the district court of the United States in and for the eastern district of Pennsylvania, of May sessions, in the year of our Lord one thousand eight hundred and fifty-five.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

FIRST COUNT.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their
[228] oaths and affirmations respectively, *do present that Henry Hertz, late of the district aforesaid, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit, on the twen-

tieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, in the district aforesaid, and within the jurisdiction of this court, with force and arms, did hire and retain one William Budd to enlist himself as a soldier in the service of a foreign prince, state, colony, district, and people, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

SECOND COUNT.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present that Henry Hertz, late of the district aforesaid, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit, on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, and within the territory and jurisdiction of the United States, and of this honorable court, with force and arms, did hire and retain William Budd to enlist and enter himself as a soldier in the service of a foreign prince, state, colony, district, and people, to wit, the service of Her Most Gracious Majesty the Queen
[229] of Great Britain and Ireland, *contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present that Henry Hertz, late of the district aforesaid, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit, on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with the intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

FOURTH COUNT.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present that Henry Hertz,
[230] late of said district, yeoman, and Emanuel *C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit, on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, and within the territory and jurisdiction of the United States, and within the jurisdiction of this honorable court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with the intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, to wit, the service of Her Most Gracious Majesty the Queen of Great Britain and Ireland, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

FIFTH COUNT.—The grand inquest of the United States of America, inquiring for the eastern district of Pennsylvania, upon their oaths and affirmations respectively, do further present that Henry Hertz, late of said district, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit, on the twentieth day of February, in the

year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this court, with force and arms, did
[231] hire and retain *William Budd to go beyond the limits and jurisdiction of the United States, with the intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, the said Henry Hertz and Emanuel C. Perkins, at the time they so hired and retained the said William Budd to go beyond the limits and jurisdiction of the United States, with the intent as aforesaid, not being a subject or citizen of any foreign prince, state, colony, district, or people, transiently within the United States, and said hiring and retaining not being on board any vessel of war, letter of marque, or privateer, which at the time of the arrival within the United States of such vessel of war, letter of marque, or privateer, was fitted and equipped as such, and the said William Budd, so hired and retained, not being a subject or citizen of the same foreign prince, state, colony, district, and people, transiently within the United States, enlisting and entering himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, the United States being at peace with such foreign prince, state, colony, district, and people, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

SIXTH COUNT.—The grand inquest of the United States of
[232] America, inquiring for the eastern dis*trict of Pennsylvania, upon their oaths and affirmations do present that Henry Hertz, late of said district, yeoman, and Emanuel C. Perkins, late of the district aforesaid, yeoman, heretofore, to wit, on the twentieth day of February, in the year of our Lord one thousand eight hundred and fifty-five, at the district aforesaid, and within the territory and jurisdiction of the United States, and within the jurisdiction of this honorable court, with force and arms, did hire and retain William Budd to go beyond the limits and jurisdiction of the United States, with intent of him, the said William Budd, to be enlisted and entered as a soldier in the service of a foreign prince, state, colony, district, and people, to wit, in the service of Her Most Gracious Majesty the Queen of Great Britain and Ireland, the said Henry Hertz and Emanuel C. Perkins, at the time they so hired and retained the said William Budd to go beyond the limits and jurisdiction of the United States, with the intent as aforesaid, not being a subject or citizen of the said Queen of Great Britain, transiently within the United States, and said hiring and retaining not being on board any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, and the said William Budd, so hired and retained, not being a subject or citizen of Her Most Gracious Majesty the Queen of Great Britain and Ireland,
[233] transiently within the *United States, enlisting and entering himself to serve the said Queen of Great Britain on board such vessel of war, letter of marque, or privateer, the United States being at peace with the said Her Most Gracious Majesty the Queen of Great Britain and Ireland, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

JAMES C. VAN DYKE,
Attorney for the United States for the Eastern District of Pennsylvania.

J. C. VAN DYKE, esq., attorney for the United States, opened the case on the part of the prosecution in substance as follows:

May it please the court: Gentlemen of the jury, it is a fact which will be judicially noticed by this court and jury, that during the year 1855, as for some time previous, the Crimea has been the site of a sanguinary and melancholy conflict between some of the most powerful nations of the globe. That conflict has been conducted principally by the British, French, and Turks on one side, and by Russia on the other, and has become part of the political and legal history of nations. It is not important for us to inquire into the cause of this conflict, nor is it necessary for us to trace the various military or political maneuvers by which it has been conducted, much less to endeavor to ascertain or speculate as to the probable result of an attack on the part of the [234] allies *producing those misfortunes to the British government which they have endeavored to retrieve by a violation of law in this country. We do not deem it in any degree important to the American people that the combined forces of Southern Europe should be successful against a single nation of the North in maintaining her asserted rights. In this free and republican country, the home ordained by Providence for the oppressed of all nations, we have very little to do with the struggles for supremacy and power by the different crowned heads of the Old World. The various schemes which have been adopted for the support of a balance of power by the potentates of Europe never have, and I am of opinion never will advance those republican institutions which it is our pleasure and duty to foster. On the contrary, those combinations which have been formed in support of such balance, have at all times been made the instrument of retarding in Europe the progressive democratic spirit of the age, and of binding the masses more firmly beneath the yoke of an overgrown and decaying aristocracy; and although the popular pulse in this country is manifestly against all war which originates in the desire to perpetuate or extend any other than a republican form of government, yet a proper regard for our national integrity forbids us to tolerate, on the part of those residing among us, any intermeddling in the disputes of other nations, where those disputes do not interfere with or concern the legitimate objects and manifest destiny of our own wide-spreading institutions. Except in such cases our [235] policy is peace, and we should en*deavor to keep ourselves free from all political connections which might in any way involve us in the conflict among European powers, not so much for the reason that we are not ever ready to defend our rights by an effectual resort to arms, but because our implied and treaty obligations require us firmly and faithfully to maintain an impartial neutrality.

By prudence and an entire good faith in observing the position of an independent neutral nation we increase our own happiness and prosperity at home, and secure to ourselves the right to demand a proper respect abroad.

A neutral nation cannot with propriety interfere with any matter of dispute between foreign belligerent parties, nor can it furnish aid to either without justly incurring the danger of the displeasure of the other. The propriety of a nation not directly involved in an existing war, in maintaining this position of strict impartiality, is manifest. It is protection and preservation both to our citizens and our property. This has been the doctrine of all neutral powers, and although for centuries disregarded by European governments in violation not only of the well-settled laws of nations, but also of highly penal statutes, it has ever

been regarded by American statesmen as a cardinal element in American diplomacy.

The benefits of a strict observance of neutrality are too great and too many to be enumerated in the trial of the issue which I am about to present to you. Suffice it to remark that, so great are those bene-
[236] fits, that from the begin*ning of our Government we have considered it the duty of every resident in this country, whether minister plenipotentiary, consul, or private citizen, to inquire the character and extent of our laws upon this subject, and carefully to observe them.

No one residing here has a right to violate the national sovereignty of the United States by setting those laws at defiance, by the perpetration of acts derogatory to our character as an independent, impartial, neutral nation; and any neglect of this duty renders him amenable to the laws of the land. As an example of the early feeling of our Government upon this subject, Mr. V. read the proclamation of President Washington, in 1793, in relation to "the war then existing between Austria, Prussia, Sardinia, Great Britain, and the Netherlands, on the one part, and France on the other, stating that the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent powers."

I have therefore thought fit, by these presents, to declare the disposition of the United States to observe the conduct aforesaid toward those powers respectively, and to exhort and to warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever which may tend in any manner to contravene such disposition.
[237] *And I do hereby also make known that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture by the laws of nations, by combatting, aiding, or abetting hostilities against any of the said powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and, further, that I have given instructions to those officers to whom it belongs to cause prosecutions to be instituted against all such persons who shall, within the cognizance of the courts of the United States, violate the laws of nations, with respect to the powers at war, or any of them.

The justice of the principles contained and proclaimed in this message, no doubt produced in 1794 the passage of the first law for the protection of our neutrality. That act is the same in its principal features as the English statute 9 Geo. II, ch. 30, sec. 2, and 29, ch. 17, sec. 2.

Mr. Van Dyke then referred to the various acts of Congress which had at different times been enacted for the purpose of imposing punishment upon those who should violate the national sovereignty of the United States by interfering with the rights of belligerents.

The act of June 5, 1794, ch. 50, punishes any citizens of the United States for accepting and exercising a commission to serve in any war, on land or at sea, in the service of any foreign prince or state,
[238] and prohibits any *person within the territory or jurisdiction of the United States enlisting or entering himself, or hiring or retaining another person to enlist or enter himself, or to go beyond the limits of the United States, with the intent to be enlisted or entered in the service of any foreign prince or state as a soldier, or as a mariner, or seaman on board any vessel of war, letter of marque, or privateer, and forbids the fitting out or attempting the fitting out of ships of war, within any of the waters of the United States, or procuring the same to be done. This act also forbids any person within the territory of the United States increasing or augmenting, or procuring the increase or augmentation, or knowingly being concerned therein, of the force of any ship of war, cruiser or other armed vessel of any foreign prince or state, or belonging to the subject of any foreign prince or state, the same being

at war with any other foreign prince or state with whom the United States are at peace.

Section 5 prohibits all persons within the territory or jurisdiction of the United States to begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, with whom the United States are at peace.

Section 6 makes the offense indictable in the district court of the United States.

Section 7 authorizes the President of the United States to em-
[239] ploy the armed forces of the United States, to prevent *the commission of the offenses declared against by the neutrality laws of the United States.

Section 8 authorizes the President to use the armed forces of the United States to compel the departure of any armed ship of any foreign prince, in all cases in which by the laws of nations or the treaties of the United States they ought not to remain in the United States.

This act was to continue in force for two years, or until the next Congress thereafter. In 1797 the act was further extended for the period of two years.

On the 24th April, 1800, Congress, by an enactment, made the act of 1794 *perpetual*.

The next enactment was March 3, 1817, ch. 58, by which new punishment and penalties were imposed for a violation of the provisions of the act of 1794.

Mr. V. said he referred only to the substance of these acts of Congress, without delaying the court to read from the books, because, having been repealed by the law under which the present bills of indictment are framed, they are important for two reasons only:

1. They show, in a most conclusive manner, the policy of our Government in maintaining a strict neutrality on the *international* affairs of European powers. "Peace with all nations, entangling alliances with none" has ever been the motto, not only of the Government but of the people of this country.

[240] By adopting and strictly observing this just and fair *policy, the United States has in times of intense political excitement, and bloody and disastrous warfare in other countries, cultivated peace with all nations, and secured at all times national repose and commercial prosperity at home and respect abroad. By fulfilling with a strict impartiality our neutral responsibilities toward belligerent powers, we have in times past avoided the disasters which have befallen other free governments, and, by continuing so to do in the future, we will continue able to present to mankind an example of republican integrity worthy of imitation by the civilized world.

2. They are important, because, from their peculiar similarity with the act of 1818, under which these defendants now on trial are indicted, we are enabled more fully to comprehend the meaning of the several judicial constructions which have been given to them, especially in cases of prize, and to ascertain the bearing of such construction upon the act of 1818.

In 1818 the Congress of the United States felt the importance of remodeling the law upon the subject of American interference in disputes between foreign nations, and in act passed on 20th April, which repeals all former laws upon the subject, adopted a most wholesale law, which, though varying somewhat from former enactments, is the same in all essential points. Mr. Van Dyke referred to this act at

length. The defendants are indicted under the provision of the second section of this act. The grand jury have found several bills of
[241] indictment against them *for the various violations of this law, which seem to them susceptible of the most easy proof.

It will be observed that the crime mentioned in this section consists in the doing of various acts. You will be instructed by the court that you must be satisfied of certain propositions which it will be my duty to submit to your consideration.

First. It will be necessary for the Government to satisfy you that the act complained of was committed within the territory of the United States.

Second. That the defendants, or either of them, enlisted or entered himself respectively in the service of a foreign prince, state, colony, district, or people, as a soldier, or as a mariner or seaman on board any vessel of war, letter of marque, or privateer.

Third. That the defendants, or either of them, hired or retained another person to enlist or enter himself in such service.

Fourth. That the defendants, or either of them, hired or retained another person to go beyond the limits or jurisdiction of the United States, with the intent to be enlisted or entered in such service.

Upon the first point I remark that, if from the evidence you are satisfied that the acts complained of were not committed within the limits of the United States, and also within the limits of the jurisdiction of this court, which is bounded by those counties forming the eastern district of Pennsylvania, it will be your duty to acquit both the de-
[242] *fendants on all the bills now laid before you. Upon this point, however, gentlemen, I think you will have no trouble. The evidence will be conclusive that whatever was done by the defendants was done within the eastern district of Pennsylvania.

Upon the second point you are relieved from any inquiry, there being no charge in the indictment that the defendants, or either of them, enlisted himself in any foreign service.

Having found, however, the first point in favor of the Government, your investigations will be directed to the third and fourth points of inquiry, viz: Did the defendants, or either of them, at the various times specified in the various bills under consideration, hire or retain any or all of the persons mentioned to be enlisted or entered in a foreign service, or did they hire or retain any or all of the persons mentioned in these bills to go beyond the limits of the United States, with the intent to be enlisted or entered in such foreign service? If either, or both, then you will find them, or either of them, guilty on such counts in the indictment as are applicable to the facts upon which you base your conclusions.

The court, I am of opinion, will inform you that the intent mentioned in the act refers to the intention of the party enlisted, hired, or retained. Not that such an intent must be an absolute determination to enlist when arriving beyond the limits of the United States, but the crime charged against the defendants being the hiring of some other person, which other person must have the intent, it is sufficient ground
[243] for conviction, if, *from all the testimony, you are satisfied that the defendants, at the time they so hired or retained any other person, believed it to be the *bona-fide* intention of the person so hired or retained to enlist or enter such foreign service when he should arrive beyond the limits of the United States. Upon this point, however, gentlemen, you will have no difficulty upon many of the bills, as I shall be able to prove to your entire satisfaction, first, that the defendant Hertz thought the recruit had such intention; and, secondly, that the

recruit did, in fact, agree to depart from our jurisdiction with intent to enlist.

Having thus briefly reviewed the political policy of our Government, and the law applicable to the present prosecution, permit me to call your attention to the facts as I shall be able to present them to your serious consideration. So far as applicable to the prosecution, they are easily understood.

I have said that the war in the Crimea was conducted by the British, French, and other nations, as allies, against the single power of Russia. I have said that the consequences of that war had been disastrous to the besieging parties, and that the signs of the times indicated a still more humiliating fate. The English army having met the most serious losses, the government of Great Britain, in direct violation of her duty toward us, and with a design of misleading those residents of the United States who did not fully comprehend the nature of our laws, devised a plan for the purpose of partially regaining the position and
[244] standing which, in the absence of the proper *exercise of the advanced military experience of the age, they had lost.

A plan for this purpose was adopted, and attempted to be carried out, by his excellency John C. Crampton, the minister plenipotentiary of Her Majesty, assisted by several agents of the British government, within the territory and jurisdiction of the United States; and I think that you will be satisfied that Mr. Crampton thus acted with the knowledge and approbation of his government. This high functionary of that government made contracts and agreements with certain persons known in this country as able and efficient officers in the various conflicts which have recently taken place on the continent of Europe. The parties thus contracted with were to commence a system of recruiting men within our territorial limits.

There will be examined before you two or three individuals who were engaged in carrying out this plan, and who, on various occasions, had interviews with Mr. Crampton, and with him adjusted and perfected the programme for this enlistment. Mr. Howe, Sir Gaspard Le Marchant, governor of Nova Scotia; Mr. Wilkins, his secretary; Mr. Barclay, the British consul at New York, and other British representatives in power, also assisted in and directed this flagrant violation of our law.

In the perfecting of this general design, Mr. Howe came to Philadelphia, and endeavored to make an arrangement with Colonel Rumberg, well known here for
[245] *many years as one of the publishers of the German Democrat, and now known as one of the editors of the German Adopted American, published in Philadelphia and Pottsville. Mr. Howe brought to this gentleman a proclamation, which will be submitted to you, calling for enlistments within the United States to serve in the foreign legion, then forming at Halifax. Colonel Rumberg was at first pleased with the proposition, and felt disposed to lend his aid in its furtherance, but afterward, upon being informed that such enlistments were a violation of the laws of the United States, and that he might get into difficulties, he abandoned it.

He, however, translated the proclamation for Mr. Howe, and having met Mr. Hertz and Mr. Howe together at Jones's Hotel, he published the proclamation in his paper for Mr. Hertz.

Arrangements were made by Mr. Howe and Mr. Crampton with the defendant Hertz, who, for them, undertook the enlistment of men at his office, which he opened for that purpose, at 68 South Third street. Mr. Hertz published and paid for the proclamation for these recruits in various newspapers. That proclamation was signed by Lewis M. Wil-

kins, secretary of the provincial government of Nova Scotia, and calls upon persons to enlist in the foreign legion.

[246] *While this matter was going on, Captain Strobel was either sent for by Mr. Crampton, or came himself to him, I do not recollect which, and entered into negotiations with him for carrying on this business. Mr. Crampton told Mr. Strobel that he had written to his home government for the purpose of learning what arrangements should be made in this country for enlisting soldiers, and had not yet received a reply; but, as soon as he received it, he would let him know. A short time afterward he wrote him a note, informing him that he had received the reply, and was prepared to enter into the proper arrangements for carrying on the enlistment. They met together, and Mr. Strobel prepared for him a plan which he had devised for the purpose of recruiting men in the United States, and taking them beyond our borders to serve in the "legion." The plan, with some alterations, was adopted by Mr. Crampton, and Mr. Strobel was sent through the large cities of the United States to establish various recruiting offices. I give the most prominent facts, merely running over them as briefly as possible. After having first gone to New York, he came to Philadelphia, and met Mr. Hertz, who was then engaged enlisting men in this city, and who had a number already enlisted. Mr. Hertz had, up to the 24th of March,

[247] one hundred men which Mr. Strobel was to take to Halifax; and *on the 25th of March they sailed in the steamer Delaware, bound for that place. These men were enlisted at Hertz's office, No. 68 South Third street, whither the advertisements had called them. Mr. Strobel saw them there enlisted, and, to a certain extent, assisted in enlisting them; and on Sunday, the 25th of March, he sailed in the steamer Delaware with about seventy-five men, the rest having deserted between the time of hiring or engagement, and the time of sailing. These men were taken to Halifax by Captain Strobel, and there examined and attested; were placed in the barracks, and a short time afterward sailed for Portsmouth, England. On the following Wednesday, Mr. Hertz had made an arrangement to send another company of recruits from the United States, in charge of a person named William Budd, a very intelligent and good officer, whom he had also engaged to go beyond the limits of the United States, with the intent of entering into the British service. The officers of the United States having learned that this recruiting was going on, devised, in pursuance of directions from the administration at Washington, the means for stopping it; and after Mr. Budd with his company had embarked from Pine street, on

[248] board the steamer Sanford, being furnished *by Mr. Hertz with free tickets for a passage to New York, where they were to get others from Mr. Howe to take them the rest of the journey, and had progressed as far as the navy-yard, the United States marshal, having a warrant, went on board and arrested the whole company, and brought them to Philadelphia, where the parties who had assisted them, together with the papers in their office, were taken in charge.

That Mr. Hertz was engaged in willfully violating the law is proved by several circumstances connected with the case. He had the proclamation, in the shape of a handbill, printed and posted in the streets of Philadelphia, and paid for publishing the proclamation in the Ledger and Pennsylvanian. He took an advertisement to the German Democrat, which called for recruits for the foreign legion, and had an office opened and individuals there to assist him in taking down the names of those who applied, and examining them to see if they would be received. He there told them that they would get $30 bounty and $8 a

month, and also stated that various persons would receive commissions. He also gave them tickets for their passage to New York, some of which tickets were taken from those arrested, and will be produced. During the whole of his enlistment, the defendant, Hertz, was actively engaged in procuring men for that purpose.

[249] *Arrests having been made in all parts of the United States of persons engaged in this business, the representatives of Her Majesty in this country became somewhat alarmed as to the results. Mr. Crampton then made arrangements with Mr. Strobel and one Dr. Ruess, who met him at Halifax, and devised plans as to the manner in which the recruiting was thereafter to be conducted in the United States, and on the 15th May, or thereabouts, the whole programme of proceedings was changed by his excellency the British minister and Sir Gaspard Le Marchant, governor of Nova Scotia. They then devised a new plan of violating the national sovereignty of the United States, and of evading our laws enforcing neutrality—not a very praiseworthy occupation within the borders of a friendly government for the dignified representative of the self-styled mistress of the seas; but it was an occupation, which, if permitted by our people, might have destroyed the most amicable and friendly relations which exist, and which, I trust, may ever continue, between the United States and the Russian government. Mr. Crampton and his associate representatives of Great Britain on this continent gave directions to Captain Strobel to repair immediately to all the recruiting offices in the United States, and order the persons engaged in those offices to adopt the system

[250] which they had prepared *for the guidance of the recruiting agents; giving to these agents at the same time a caution that, should they be unsuccessful in evading the laws and eluding the authorities of the United States, they could hope for no protection from the British government; that is, the British government was willing to accept the advantage of the successful criminal conduct of all their minister and his recruiting agents, but refuse to defend or assist those agents if they should be so unfortunate as to be detected. Honorable and generous Great Britain! and O, most faithful British ministers!

The ruse then adopted was to send men to Canada and Halifax, under the pretense of engaging them on the railroad, and, when there, to enlist them in the army. For the purpose of carrying out this object, regular written instructions were given by Mr. Crampton to Mr. Strobel, who, with Dr. Ruess and other officers, started in company with Mr. Crampton to the United States. Some of these officers afterward left the service of Her Majesty, and, as was their duty, have since expressed their willingness to disclose all their knowledge in support of the prosecutions which have been commenced.

The active connection and co-operation of nearly all the repre-

[251] sentatives of Her Majesty *in this general design will be made clear to you by unimpeached testimony. I think I can say with confidence that his excellency John E. Crampton, minister extraordinary, &c.; his excellency Sir Gaspard Le Marchant, governor of Nova Scotia; his excellency Sir Edmund Head, governor of Canada; Sir Joshua Howe; Lewis M. Wilkins, provincial secretary of Nova Scotia, and at least one British consul, directed this course of conduct. All these gentlemen, it will be in evidence to you, have, with Mr. Hertz, the defendant, taken an active part in directing the commission of the crime charged; and whether or not by a bold attempt to disguise their real object, is a matter of very little importance.

The oral testimony of the witnesses will in some most material and

important facts be corroborated by written documents. I shall be able to produce to you some five or six original letters and notes of Mr. Crampton, and also the original instructions to the agents as to the mode in which the enlistments were to be conducted in the United States. You will also have in evidence the original proclamation or advertisement in the handwriting of Sir Joseph Howe, inviting persons to enlist in the foreign legion, as well as several other letters and
[252] papers of considerable importance on the points in issue. *I take it, gentlemen, briefly to conclude what I have to say to you at this stage of the proceedings, that if I show that either or both of these defendants, in conformity with this general design of the British government, were engaged in thus enlisting, or hiring, or retaining any person to be enlisted, I have made out a clear case. I am free to admit that the evidence against one of the defendants is not of the most conclusive character, he not being known as being positively engaged in enlisting, hiring, or retaining any particular person, although he was in talking and giving directions on the subject. The court will instruct you how far a person must go in order to commit this crime, and whether the fact of Perkins sending a man to Hertz, for Hertz to enlist him, constituted a crime on the part of Perkins.

I shall prove to you distinctly, by unimpeachable evidence, that all the persons mentioned in all of these bills have been enlisted by the defendant Hertz, in the first place in the service of Her Most Gracious Majesty the Queen of Great Britain, and, if not enlisted within the jurisdiction of the United States, that he has hired and retained each and every one of these individuals and many more to go beyond that jurisdiction, to wit, to Halifax, in Nova Scotia, for the purpose of being there
[253] enlisted in a foreign *legion destined for the Crimea to engage in the battles of the allies. If I prove these facts, I can safely ask at your hands a verdict against him for one of the most flagrant violations of the national sovereignty of this country which has ever been known to have been perpetrated within its borders. First, a violation of our law; second, a violation of the confidence reposed in a high representative functionary; and, thirdly, a violation of the sympathies and a national insult to the sentiments and the feelings of our people.

MAX F. O. STROBEL, sworn:

After the witness was sworn, Mr. Remak desired the district attorney to state distinctly what he intended to prove by him.

Mr. Van Dyke said he had one objection to doing so, but he thought it would occupy too much time.

Judge Kane said that he preferred that the witness should be examined in the first instance, without being distinctly apprised of all the facts about which he was to testify.

Examination by Mr. VAN DYKE:

Question. Of what country are you?—Answer. I am from Bavaria.
[254] Q. Have you been in military service?—*A. Yes, sir; in the Bavarian service, in the artillery.

Q. Have you ever been in war?—A. Yes, sir; I have joined the revolutionists in Bavaria.

Q. In 1848?—A. During the revolution in the year 1849.

Q. How did you happen to leave the service?—A. Well, we were defeated, and obliged to leave Baden and go into Switzerland; then I stopped there, and traveled through France and England until 1851. On the 13th of May, 1851, I embarked at Havre, and came to this coun-

try, and arrived here in June, 1851. On the 23d of June, 1851, I came to this country; I was in New York several weeks, and then went to Washington, and there got employment in the Coast Survey Office. I was there until 1853, when I went out with the expedition to Oregon under Governor Stevens. I went up with him to Minnesota; I left his party out on the plains on Red River, and came back to Minnesota on the 7th of September, 1853, and came down to Saint Louis, and started with Colonel Frémont on his winter expedition to San Francisco about this great Pacific Railroad. I have been assistant topographical engineer of Colonel Frémont. I left San Francisco on the 1st of May, 1854.

I crossed the isthmus, and came back with our Indians, and
[255] brought them up to Kansas again. From there I went back *to Washington City, where I finished the maps for the works of Colonel Frémont, which I suppose are now before Congress.

Q. When did you finish the maps?—A. I finished them in the end of August, 1854. I then received a letter of recommendation from Mr. Benton to the different directors of railroads to secure me a position as engineer. I went with this recommendation or letter of introduction to Missouri. I took sick there, and was obliged to leave the valley of the Mississippi, and come back to Washington City. When I came back to Washington I was engaged in the Pacific Railroad office, at that time established in Washington, and was at work there until the 1st of February. In the end of January I saw Mr. Crampton, and received from Mr. Crampton the reply.

Q. State the whole conversation which took place between you and Crampton.—A. I received from Crampton the reply that he could not tell me at that moment what could be done. I said to Crampton that I believed in this very time, as it was in the winter time.

Q. Last winter?—A. Yes, sir; that many people were out of work in
New York and other places, and it would be very easy to raise
[256] men for this "foreign legion" *that the English Parliament had agreed to establish. Crampton told me that he believed so himself, but at that moment he had no orders from the home government to do anything in the matter, and that he would let me know as soon as he received any communication from home. A few days afterward, I suppose on the 28th February, I received a letter from Mr. Crampton.

Q. Is this the letter?—A. Yes, sir.

Q. And this the envelope in which it was inclosed?—A. Yes, sir.

The letter was here read in evidence as follows:

WASHINGTON, *February* 4, 1855.

SIR: With reference to our late conversation, I am now able to give you more precise information in regard to the subject to which it related.

I remain, sir, your obedient servant,

JOHN F. CRAMPTON.

Mr. MAX STROBEL.

After receiving this letter, I went to see Mr. Crampton the next morning: Mr. Crampton told me that he had received letters from home, and that he was willing now to raise men here in the jurisdiction of the United States for a British foreign legion, which should be established either in Nova Scotia or in Canada.

Q. Did he use the words "within the jurisdiction of the United
[257] States?"—*A. Yes, within the jurisdiction of the United States.

Q. He used those precise words, did he?—A. Yes, sir; but he was not sure at that time whether the main depot should be at Halifax or in Canada, and he was obliged to make arrangements with the governor-general of Canada. At the very same time he gave me a letter of

introduction to the British consul in New York, Mr. Barclay, in which he states that I am already acquainted with this matter, and that Mr. Barclay might receive me and talk with me about this subject, and that I should make preparations in New York for getting men. He told me at the very same time he would send a messenger to the governor-general of Canada. I went to New York, and delivered my letter to Mr. Barclay.

Q. What was this messenger sent for?—A. To arrange matters about a depot or place where we could send these men whom we got here in the States. I was waiting in New York for the return of this messenger for several weeks. The messenger returned and was sent again, and no understanding could be made between Sir Edmund Head and Mr. Crampton. Head is governor-general of Canada; because during that time the governor of Nova Scotia had received orders from England to commence a new depot in Halifax, and to try and get men in the

[258] United *States for this service.

Q. The arrangement was not made by the messenger sent to Canada to Sir Edmund Head, because he had received a letter from the governor of Nova Scotia, stating that he had received orders from England to make Halifax the depot?—A. Yes, sir. The reason for sending all the men to Halifax was the order that the governor of Nova Scotia received from England. During that time I went back to Philadelphia. It was on the 10th or 11th of March, 1855, when I came back to Philadelphia. I learned from a friend of mine, a certain Dr. Biell, who is now regimental surgeon in this foreign legion, that Mr. Hertz had received letters, one from England, another one from Mr. Crampton, though I do not know positively—I am not certain where it is from—and that he had spoken to this Dr. Biell, and told him he was able to procure him a commission in this foreign legion.

Q. In consequence of what Dr. Biell told you, state what you did?—A. I went to Hertz, and had a conversation with Hertz about this matter.

Q. Where was he?—A. He was in his office, No. 68 South Third

[259] street, *opposite the Exchange. I saw then Mr. Hertz, and from that time (9 o'clock a. m.) I was with Mr. Hertz till 3 p. m., where, in pursuance of the advertisements, men came and wrote their names down on a book, and agreed to enter the foreign legion at Halifax.

Q. Have you ever seen a bill like this?—A. I have seen this handbill.

Q. Where?—A. In Hertz's office.

The bill was here read in evidence. It reads as follows:

MEN WANTED FOR HER MAJESTY'S SERVICE.

(Arms of Great Britain with mottoes.)

PROVINCIAL SECRETARY'S OFFICE,
Halifax, Nova Scotia, March 15, 1855.

The lieutenant-governor of Nova Scotia having been employed to embody a foreign legion, and to raise British regiments for service in the provinces or abroad, notice is hereby given that all able-bodied men, between the ages of nineteen and forty, on applying at the depot at Halifax, will receive a bounty of £6 sterling, equal to $30, and on being enrolled will receive 8* per month, with the clothing, quarters, and other advantages to which British soldiers are entitled. Preference will be given to men who have already seen service.

The period of enlistment will be from three to five years, at the option of the

[260] British *government.

Officers who have served will be eligible for commissions. Gentlemen who wish to come into the province, will please lodge their names, rank, date of service, &c., at the office.

Persons who serve in the foreign legion will, on the expiration of their term, be entitled to a free passage to America or to the country of their birth.

Pensions or gratuities for distinguished services in the field will be given.

Nova Scotian and other shipmasters who may bring into this province poor men willing to serve Her Majesty will be entitled to receive the cost of a passage for each man shipped from Philadelphia, New York, or Boston.

By command:

LEWIS M. WILKENS,
Provincial Secretary.

Q. (Another bill here shown the witness.) Have you ever seen this bill?—A. I have, in Detroit.

The bill was here read in evidence. It read as follows:

NOTICE.

[261] A foreign legion is now being raised in Halifax, Nova Scotia. Persons wishing to join the legion will receive a bounty of £6 sterling, or $30, from which a reduction of $5 for traveling expenses to Nova Scotia will be made. Besides good rations and quarters, men will receive $8 a month as pay. The period of enlistment is three or five years, at the option of the applicant.

For extraordinary service in the field, or wounds, bounties and pensions for life will be granted. Besides which there is now a project in view, and which will undoubtedly be carried out, to give to each soldier, at the expiration of his term of service, fifty acres, and to each non-commissioned officer one hundred acres of land in Canada.

All who are inclined to enter the service under the foregoing very favorable conditions, are hereby invited to apply at Niagara City, Butter barracks, or at the Windsor Castle, Windsor, C. W.

Q. (Another bill shown witness.) Did you ever see this bill?—A. Yes, sir. I had that printed in Detroit.

Mr. VAN DYKE. It is a German bill.

Mr. REMAK. The paper was printed to the order of the witness.

[262] Judge KANE. The paper now presented is a part of the general transaction, which does not directly affect the person on trial. It is like the letter of Mr. Crampton, which was read a short time ago, and is a portion of the general narrative.

Q. (By Mr. VAN DYKE.) Is that a true translation attached to the German hand-bill?—A. Yes, sir.

The translation was here read in evidence. It read as follows:

NOTICE.

In Halifax, Nova Scotia, a foreign legion will be formed. Every one who will enter into this legion, which is for the most part composed of Germans, and has German officers, is entitled to a bounty of £6 sterling, or $30, from which, however, $5 for traveling expenses to Nova Scotia will be taken off. Moreover, every man will receive full and good maintenance, besides $8 a month pay.

The time of service is according to pleasure, three or five years.

For extraordinary services in the field, or wounds, bounties or pensions for the whole lifetime will be given. It is also truly in prospect, that every soldier, on the running out of his time of service, will obtain fifty acres and every non-commissioned
[263] officer one hundred acres of land in Canada, as his own property.

Every one who is disposed to fall in with these conditions, is hereby notified to repair to the Niagara barrack, not far from Queenstown, Canada West, at the depot there established.

Q. You say you went to Mr. Hertz, and you saw the recruits sign the book there; look at that book and say if that is it.—A. That is the book.

Q. Where did you see that book?—A. At Mr. Hertz's office.

Q. Did you see any of the parties signing it?—A. Yes, sir, (looking at the book.) There is the handwriting of some men.

Q. Will you read me the names of the men you saw sign?—A. The names of the officers were cut out.

Q. Do you recollect the name of Joseph Purnell?—A. Yes, sir; I recollect the names of all the men in my company.

Q. Go on and state what you did after the men enlisted.—A. After we had more than one hundred men, we gave them cards, and told them we would be ready to start on Sunday, the 25th of March, 1855, on the steamer Delaware, in the morning, for New York.

[264] *Q. What did you tell or Hertz tell these men? If you told them anything, what was the understanding?—A. The understanding was that those men who signed this book——

Judge KANE. Was the understanding announced in the presence of Mr. Hertz?

WITNESS. Yes, sir, in the presence of Mr. Hertz. The men were told that there was a foreign legion now established in Halifax, and that Mr. Hertz would send them to Halifax to the foreign legion to enlist in it. Every man that is well, and able-bodied, and willing to enlist in this foreign legion, shall have a free passage and $30 bounty, and $8 a month pay, and the men who agreed to be attached to this foreign legion signed this very book.

Q. Who said that they should sign that book?—A. Mr. Hertz; and they signed this book, with the understanding to go to Halifax and enlist in the foreign legion, and it was also told to those men that an officer should go in their company, and I was called captain of those men before I started, and was introduced to them before we started as their captain. I was to take that company. I recollect Palattre and Purnell very well.

[265] Mr. Van Dyke here asked the witness whether *he recollected the names of the various persons who composed his company, when he replied that he remembered the following, besides some sixty more, whose names he did not recollect: F. P. Garrier, Jacob Branning, Frederick Fuss, Hugh Killen, Frederick Ferdinand Bostandig, Emanuel Urnhant, Edward Rollun, Carl Muhlenhausen, John Schaeffold, Petrus Pauls, John Koelomus, Jacob Blecher, Foley Worrell, Rudolph Charles Ruth, Peter Ropert, Edward Dobeller, Jacob Roth, Pierce Pelattre, Joseph Purnell, Gustave Prothe, Gunther Leopold Neisbaum, Wilhelm Heinrich, Karl Altenberg, Karl Barthold, Johann Baumeiseer, F. Ulrich.

Q. Were all these persons in your company?—A. Yes, sir.

Q. How many more went with you?—A. Well, I started from here with about seventy-five or seventy-six men and two officers, Lieutenant Essen and Lieutenant Shuman, on this steamer Delaware, to New York.

Q. When did you leave here?—A. On Sunday, the 25th of March, early in the morning, and arrived in New York on Monday morning about 5 o'clock.

[266] Q. Well, sir, when you got in New York, what did you do?—*A. I came to New York in the morning at 5 o'clock, and left my men on board the boat, as I was not furnished with means enough, as I had received only some money from Hertz; I had received tickets and $25 to go on to New York, and I was there to receive more money.

Q. Was that money given you for the purpose of taking this company on?—A. Certainly; and I was to receive further means in New York to take the men on to Halifax.

Q. When you got to New York, what did you do?—A. I went to see Mr. Barclay, the British consul at New York, and when I got there Mr. Barclay sent me to Delmonico's to see Mr. Howe. The Hon. Joseph Howe was at that time agent from the British government in this recruiting business in the States. He was living at Delmonico's. I saw Mr. Bucknell, not Howe. He told me I should be furnished with means

as early as possible, before 10 o'clock. I had to divide the men in different taverns, and keep them together there for three days. At last I was furnished with tickets and means to start with these men for Boston, where an English brig, the America, was waiting there to receive us and take us on board to take us to Halifax. Mr. Hertz, in the presence of Mr. Bucknell and Mr. Turnbull, told me this.

[267] *Q. How did Mr. Hertz get to New York, if you left him in Philadelphia when you sailed?—A. I traveled with the boat, and Mr. Hertz took the railroad. Mr. Howe or Bucknell was to be applied to to let me have the necessary means to go on with the company. I received this money in New York, through Mr. Hertz, at the beginning of the day, and, before I started, some from Mr. Bucknell. I left New York on the Stonington road, and came to Boston. I arrived there about 5 o'clock in the morning with all the men, and found this brig, the America, ready to take us on board and bring us to Halifax. I embarked my men.

Q. Did you get this money from Hertz or Howe?—A. No, sir; from Mr. Bucknell.

Q. Did you see Howe in New York?—A. I saw Howe in New York at the time, and received a letter from Mr. Howe to Sir Gaspard le Marchant. I told him that I had so many men in town and wanted some money, and that I wanted tickets and a letter to Sir Gaspard le Marchant.

Q. The tickets you got in Philadelphia only carried you to New York on the steamer Delaware, then?—A. Yes, sir.

[268] Q. And you went to Howe and told him *you wanted tickets and a letter to the governor and some money?—A. He gave me a letter, and Mr. Hertz and Bucknell gave me the money.

Q. Who was Bucknell?—A. He was a civil engineer.

Q. Was he with Mr. Howe?—A. He was with Mr. Howe, but I do not know whether he was engaged by Howe only for the purpose of this business or not; I made the acquaintance of Bucknell only a few days before; I saw Mr. Hertz in New York at the time; Hertz told me I was to go as soon as possible; I was anxious to get the men away from New York, and he promised to see Howe and get money; he kept me twenty-four hours in trying to get money; he gave me the money subsequently, getting it from Howe; I embarked from pier B in New York, and went on the Stonington road to Boston; I got there at 5 o'clock, and went around with all my men to the tea-wharf in Boston, and found there the vessel which I was promised I would find.

[269] *Q. Who promised you?—A. Mr. Bucknell. When I came to this vessel, it was in the morning, between 6 and 7. I embarked my men at once; I gave them breakfast, and started at half-past 8 o'clock for Halifax, and arrived there on the 30th of March. When I came to Halifax, the vessel went into a private wharf, and I was put on shore to report myself to the provincial secretary and Sir Gaspard Le Marchant.

Q. Who was provincial secretary?—A. Mr. Wilkins.

Q. Is he the man who signs this proclamation?—A. Yes, sir.

Q. Lewis M. Wilkins?—A. Yes, sir.

Q. When you got to the wharf, you went on shore to report yourself to Wilkins?—A. I did so. The vessel was ordered to the royal wharf, and during that time I met some regimental surgeons and some officers of the seventy-sixth regiment, some of the artillery. Afterward Sir Gaspard Le Marchant, governor of Nova Scotia, himself came to the tea-wharf.

Judge KANE. The "tea-wharf?"

WITNESS. The "Queen's wharf." He ordered me to file the company in and show them. I did so, and Sir Gaspard Le Marchant, with other officers, passed along by the men, and inspected the men. I introduced these two men I had with me as lieutenants; they were received
[270] by the *officers as officers; and I received an order from Le Marchant to march the men up to the hospital, to have them examined, and afterward to march them out to Melville Island to have them attested. I marched them up to the hospital, and they were there examined, and two or three men rejected and one kept back, as sick. All the others I marched out to Melville Island. There they had the British barracks, and barracks erected for the foreign legion; there the men were attested. After the man is enlisted, he has to be attested and sworn as a soldier.

Judge KANE. What is attesting?

WITNESS. There is a judge comes to the quarters of the soldiers, and then the officer is there, and the judge swears the soldiers in; that is the act of attesting.

Q. What is the form of the oath?—A. The form of the oath is, that we swear to serve Her Majesty the Queen of England for a time, three or five years, or so many years as the soldiers agree upon—in this case the agreement was for three or five years—faithfully, and so on.

Q. That is the form of the oath?—A. Yes, sir, that is the oath they administered to each of those men.

Judge KANE. Is there any writing precedes it?—A. It is not in
[271] writing; it is a printed form; it *is signed by the judge, and afterward by witnesses; I signed nearly all of them.

Q. Is it signed by the recruit?—A. Yes, sir, it is signed by the recruit; after the men had been attested, I commenced the drill, and bye-and-bye the men received clothing and arms. I was at Melville Island, at the officers' quarters, with the two other officers and Dr. Biell, until the 10th of May; I was entered on the army list, as was the other officers, and we received our pay and were treated as officers; on the 9th or 11th of May, Mr. Crampton himself came up to Halifax, in order to make better arrangements about this recruiting business, as many men had been arrested in the States and kept back; on the 13th of May I received a letter from Lieutenant Preston of the seventy-sixth.

Q. (Letter shown witness.) Do you recollect this paper?—A. That is the letter of Mr. Preston, in Halifax, when he told me that Mr. Crampton wanted to see me.

Q. Who is Mr. Preston?—A. Mr. Preston is lieutenant in the seventy-sixth regiment—the officer who has charge of the barracks in Niagara.

The note was read, as follows:

[272] DEAR STROBEL: I am directed by the general to ac*quaint you that Mr. Crampton wants to see you at his house at 10 o'clock to-morrow morning; be punctual. If you like, come up to my house at half-past 9 o'clock, and we will go together.

Yours truly,

J. W. PRESTON,
Seventy-Sixth Regiment.

TUESDAY, *May* 13, *Halifax.*

Q. Where was he at the time?—A. At the time he was at the fort in Halifax with his regiment; the letter stated that Mr. Crampton wished to see me at his quarters at 10 o'clock on Sunday; I went to see Crampton, and there I found Sir Gaspard Le Marchant; I went there with Preston, and I was ordered by Mr. Crampton to make a plan out for him in writing to go to the United States, that is, to those cities

of the United States which lie on the boundary-line, such as Buffalo, Rochester, Cleveland, Toledo, Detroit, Oswego, and others; I wrote a plan for him; I said that I would want so many officers, and for every officer a non-commissioned officer.

Judge KANE. Does the plan affect the parties on trial?

Mr. VAN DYKE. I think so; it was after arrests had taken place in some of the Western cities that the British minister determined to change the plan of enlistment in the States, and this witness says that, in pursuance of that determination, he received a letter from Lieutenant
[273] Preston to call at *the quarters of Mr. Crampton; he called there, and Mr. Crampton told him that there had been some difficulty about the recruits, and wished him, Strobel, to prepare another plan, which, if adopted, would avoid that difficulty; he prepared this plan, and submitted it to Mr. Crampton, and, if I understand it, the witness will say that the plan was adopted by him with some little variation, and the recruiting was carried on in the United States in accordance with this remodeled plan.

Judge KANE. By either of these defendants in accordance with this plan?

Mr. VAN DYKE. If I may be permitted to anticipate the defense, which must be done more or less in every case, it will be, I suppose, the same as made before the commissioner in relation to Budd's company—that the men enlisted in that company, as the defendants allege, were nothing more or less than a set of men engaged to work on the railroad in Nova Scotia. We intend to show by this that Hertz, in so representing, was but carrying out the remodeled plan adopted more effectually by Mr. Crampton at Halifax. I shall show also by other witnesses that, at a period subsequent to that of which the witness now speaks, after the defendants were arrested, the defendant Hertz engaged
[274] *one Baron Van Schwatzenhorn and one Baron Schuminsky to carry on the enlisting business in Philadelphia, and that another company was enlisted by such agents of Hertz, in the manner proposed by the remodeled plan.

Mr. Remak, in reply, stated that the witness had sworn that Hertz requested him to do certain things, and whatever resulted from that alleged fact was admissible. Mr. Strobel had given evidence in regard to drawing a plan, but he had not sworn that Hertz commissioned him to devise or draw that plan. He might have been requested by Mr. Crampton to draw the plan, but the counsel for the defense could not see how that could affect, for the present, his client. He could not be responsible for the acts of Strobel after Strobel had done what he requested of him, and if he went beyond what was requested, he did it on his own responsibility.

Judge KANE. The evidence taken in connection with the offer of the district attorney is admissible entirely as it stands, in the same category with evidence originally given by him of concert of the officer with the British government. If it is not brought home to either of the parties on trial by subsequent evidence, of course it will not affect them.
[275] Mr. VAN DYKE. I do not wish my offer to be *misapprehended by the counsel for the defense in any particular. I state distinctly to the court that I have evidence to show that there was a regular game played by Her Majesty's envoy to evade the law; that those men were seemingly engaged to work on a railroad, but in reality enlisted to served in the foreign legion, and that they were told by Hertz, if any person questioned them, to reply that they had been engaged to work on a railroad in Nova Scotia. I have, for the prosecution, to es-

tablish certain important facts: one is, that the sending of these men to Nova Scotia was for the purpose of their being enlisted in the foreign legion, and their sending them there as workmen on a railroad was a specious disguise, under which they hoped to evade the law of this country. If I show that this was their intention, it is certainly evidence, and the crime is proved, notwithstanding their attempt at evasion.

Judge KANE. The evidence is admissible.

Q. Did you prepare that plan?—A. I prepared it.

Q. (Showing a paper.) Is that it?—A. Yes, sir; it is my own handwriting; it is the plan.

Q. Was this submitted to Mr. Crampton?—A. Not this one. This was the copy I first made. I afterward made a clear copy of it, which was submitted.

[276] *Q. This, then, is the original copy, of which a clear copy was made and submitted to Mr. Crampton?—A. Yes, sir.

The paper was here read in evidence as follows:

I have the honor to inform his excellency the envoy extraordinary of Great Britain in the United States, and his excellency Sir Gaspard Le Marchant, the governor of Nova Scotia, of the plan I have adopted to raise the greatest possible number of men in several different cities of the United States on the boundaries of Canada. I wish to station in Buffalo Lieutenant Shumann, with Corporal Roth; in Detroit, Dr. Reuss, with Corporal Kemper; in Cleveland, Dr. Aschenfeldt, with Sergeant Kreiger. Opposite to Detroit Sergeant Barchet shall receive the individuals sent by Dr. Reuss, and his duty will be to send them, as fast as they arrive, by railroad to Queenstown, where a depot must be established and a magistrate appointed to enlist and attest the men; and it will be the business of the commanding officer of this depot, when a sufficient number is together, to send them by steamboat wherever his excellency may decide. Those officers stationed at the above-mentioned cities will strictly follow the instruc-

[277] tions given to them, through me, from *his excellency, in regard to the manner and way to be used in encouraging and sending such individuals who are willing or desirous of leaving the United States to enlist in the British service. My intention, in giving to each commissioned officer a non-commissioned officer as assistant, is to enable those gentlemen to find out such individuals, and to avoid the necessity of employing, for this purpose, strangers, who might easily deceive them.

My opinion is that every officer, with the assistance of his non-commissioned officer, will be able to transact all the business, without being compelled to hire regular agents or runners, that is, if the gentlemen know the proper way of managing.

I will myself visit each of the places mentioned, and will particularly confine myself to where my presence will be most required. I shall also probably visit Chicago, where doubtless a great number of men may be got. We can then agree on reasonable terms for having them conveyed by railroad to Detroit, which expense, in my opinion, would not exceed $2.50 per head.

I saw all the officers and non-commissioned officers yesterday evening, and

[278] held a long conversation with them, the result of which is that we *all perfectly understand each other; that they are all entirely satisfied, and that every one is willing to do his very best in regard to this matter.

I have also made estimates of all the expenses of the officers connected with this matter for the period of one month, at their different points of destination, including their traveling expenses, which I take the liberty of laying before your excellencies.

Say, the traveling expenses of the officers from this place to their different stations.

£10 each	$400
To Schumann, Aschenfeld, and Reuss, each $240 per month	720
(From this money each has to pay his non-commissioned officer, and to meet all other expenses that may be necessary in sending the men over on the Canadian side, pay of temporary agents, runners, and tavern-keepers included.)	
Pay for Weiss, Barchet, and one other non-commissioned officer, $100 each	300
My traveling expenses from town to town, hotel expenses, pay of my non-commissioned officer, and his traveling expenses	300
	$1,720

[279] *Thus making a total amount of $1,720, equal to £344 sterling.

This, or, at most, £360. would, in my opinion, be the amount requisite to enable ten officers to carry on operations for one month, and, with reasonable good for-

tune, to deliver on the Canadian shore a large number of serviceable, able-bodied men.

I have the honor to remain your excellencies' most humble obedient servant.

Q. Was that plan adopted?—A. That is the plan which was approved and adopted by Mr. Crampton and Sir Gaspard Le Marchant, and I received orders to bring, next morning at 11 o'clock, the officers mentioned there, four non-commissioned officers of my company, all attested men, and the soldiers, to the provincial building, and meet there Sir Gaspard Le Marchant and Mr. Crampton. I went there with those men. I met there Mr. Crampton, Sir Gaspard Le Marchant, and Lieutenant Preston. I was ordered to leave Halifax immediately, and repair to the States, and I left Halifax in company with Mr. Crampton and Preston, of the seventy-sixth, with officers and non-commissioned officers. When I saw Mr. Crampton there I was in uniform and
[280] my non-commissioned officers were in uniform; when *we left, they received civil clothes from the government there, for this purpose, and went on with me. When we came to Portland, Mr. Crampton gave me orders to go with him to Quebec to see Mr. Head, the governor-general of Canada, to have a perfect understanding about the depot and the means of sending men through Canada to Nova Scotia. I went with him; I saw Sir Edmund Head in the presence of Mr. Crampton. I received letters from Sir Edmund Head to get barracks at Niagara. These barracks were to receive the men who were sent out of the States to enlist in the foreign legion. I received also at Sir Edmund's house——

Judge KANE. I am anxious not to go beyond the limit of courtesy to a foreign government. I do not wish to penetrate what was done there, unless it appears connected with the persons now on trial. The district attorney must guide the witness after this suggestion, so as to avoid the appearance of too close an inquiry into matters not clearly before this court as matters of judicial investigation.

Mr. VAN DYKE. I understand the suggestion of the court, and will try to keep the witness within the proper bounds. My whole
[281] object is to get the general plan of operations, and then *to show that the object of the general plan was to procure men from the States to join this foreign legion, and that the defendant cooperated in that general plan.

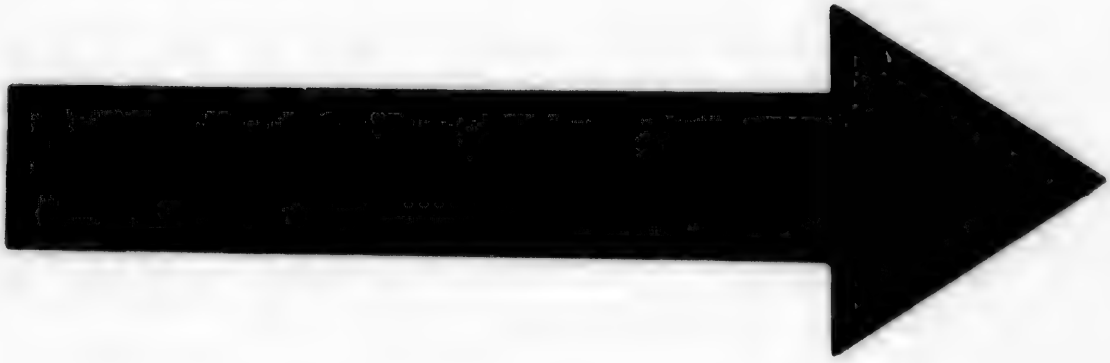
Q. (Paper shown.) Will you look at that paper, and state what it is?—A. It is the instructions I received at Quebec, in Sir Edmund Head's house, out of Mr. Crampton's own hands. The original was written in Mr. Crampton's own handwriting, and was written, at least part of it, in my presence in his room. This is a copy made from the original; I made it for the purpose of preserving a copy. The original I gave back in a report I made to Sir Gaspard Le Marchant, in Halifax. That report stated what I had done to clear me of two charges made against me up there.

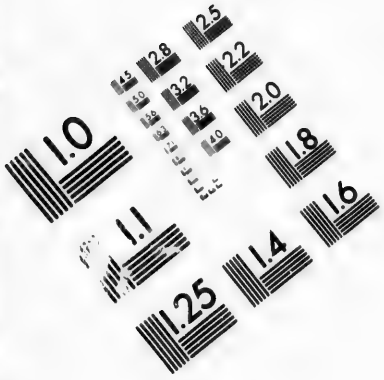
Q. That, then, is a copy made from the original instructions of Crampton, as to your duty in the United States?—A. That is a copy of the original instructions I received at this time from Mr. Crampton.

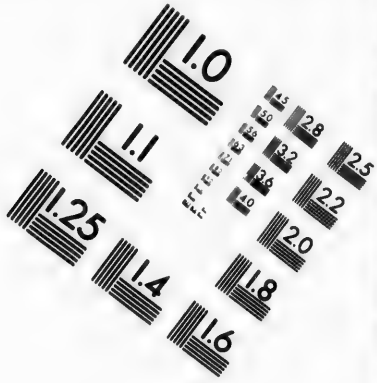
The paper was being read as part of the evidence, when, on motion, a recess was taken for ten minutes. On the court re-assembling, the reading of the paper was concluded. It is as follows:

[282] * *Memoranda for the guidance of those who are to make known to persons in the United States the terms and conditions upon which recruits will be received into the British army.*

1. The parties who may go to Buffalo, Detroit, or Cleveland for this purpose must







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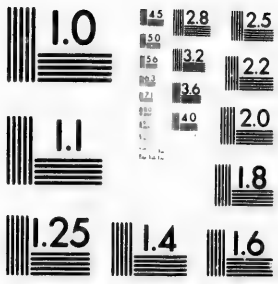

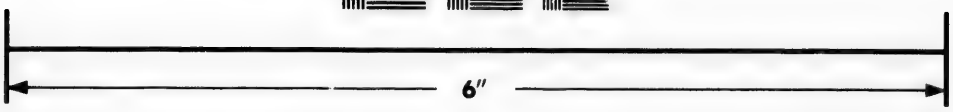

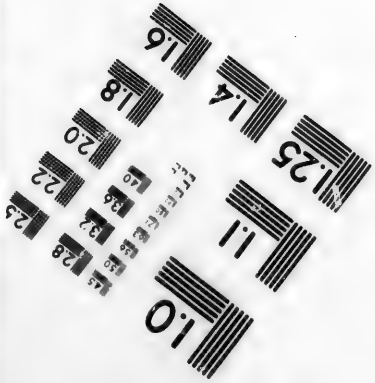

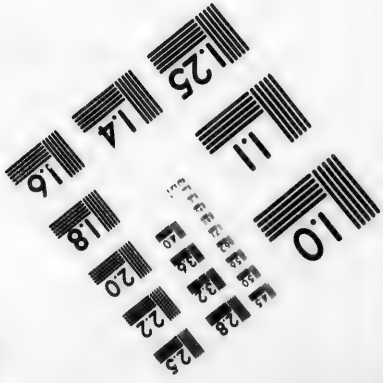

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clearly understand that they must carefully refrain from anything which would constitute a violation of the law of the United States.

2. They must, therefore, avoid any act which might bear the appearance of recruiting within the jurisdiction of the United States for a foreign service, or of hiring or retaining anybody to leave that jurisdiction with the intent to enlist in the service of a foreign power.

(Both these acts are illegal by the act of Congress of 1818, section 2.)

4. There must be no collection, embodiment of men, or organization whatever attempted within that jurisdiction.

5. No promises or contracts, written or verbal, on the subject of enlistment, must be entered into with any person within that jurisdiction.

The information to be given will be simply that those desiring to enlist in the
[283] British army, facilities will be afforded for so doing on their *crossing the line into British territory, and the terms offered by the British government may be stated as a matter of information only, and not as implying any promise or engagement on the part of those supplying such information, so long, at least, as they remain within American jurisdiction.

7. It is essential to success that no assemblages of persons should take place at beer-houses or other similar places of entertainment, for the purpose of devising measures for enlisting, and the parties should scrupulously avoid resorting to this or similar means of disseminating the desired information, inasmuch as the attention of the American authorities would not fail to be called to such proceedings, which would undoubtedly be regarded by them as an attempt to carry on recruiting for a foreign power within the limits of the United States; and it certainly must be borne in mind that the institution of legal proceedings against any of the parties in question, even if they were to elude the penalty, would be fatal to the success of the enlistment itself.

8. Should the strict observance of these points be neglected, and the parties
[284] thereby involve themselves in difficulty, they are hereby *distinctly apprised that they must expect no sort of aid or assistance from the British government. This government would be compelled, by the clearest dictates of international duty, to disavow their proceedings, and would, moreover, be absolved from all engagements contingent upon the success of the parties in obtaining by legal means soldiers for Her Britannic Majesty's army.

Examination continued by Mr. VAN DYKE:

Q. The paper just read you copied from the original one in the handwriting of Mr. Crampton?—A. Yes, sir.

Q. (Another paper shown witness.) In whose handwriting is this paper?—A. At that very time I also received this cipher to telegraph with to Mr. Crampton, and to Halifax, about this recruiting business. I cannot swear as to whose handwriting it is in, but I believe it is Mr. Crampton's; I did not see him write it, but he handed it to me.

[285] *The paper was here given in evidence. The following is a copy:

Letter.	Cipher.	Letter.	Cipher.
a	y	n	g
b	v	o	n
c	j	p	e
d	l	q	h
e	x	r	o
f	e	s	p
g	z	t	k
h	u	u	g
i	b	v	d
j	w	w	m
k	t	x	r
l	a	y	i
m	s	z	f

Q. You were to telegraph him by this cipher, instead of the usual way?—A. Yes, sir.

Q. What was the object in giving you this cipher?—A. Such ciphers were given to several officers—to Mr. Smolenski, Mr. Cartensen; and men actually engaged in the recruiting business received those ciphers.

Q. Was it for the purpose of avoiding detection?—A. It was for the

purpose of avoiding detection and avoiding any difficulties with the authorities here. It was to enable me to telegraph to Mr. Crampton from every place I might visit, without the people in the telegraph offices understanding it.

Q. Were all the officers sent on this recruiting to telegraph to Mr. Crampton as to their proceedings, and was that cipher to be used?—A. Yes, sir.

Q. (Card shown witness.) What is that?—A. That is a card of invitation to Sir Gaspard's table, in Halifax, received on the 8th April.

The card was read, as follows:

[286] His excellency Sir Gaspard and Lady Le Marchant *request the honor of Captain M. F. O. Von Strobel's company at dinner, on Sunday, 8th April, at ½ to 7 o'clock. An answer is requested.

BELVIDERE.

Q. Are these also cards of invitation to you?—A. Yes, sir.

The cards are here read, as follows:

COLONEL CLARKE:

The officers of the seventy-sixth regiment request the honor of Captain Strobel and the officers of the foreign legion's company at dinner, on Wednesday, 18th April. An answer will oblige.

Colonel Fraser, Colonel Stotherd, and the officers of the royal artillery and royal engineers request the honor of Captain Max F. O. Strobel's company at dinner, on Tuesday, the 3d April, at 7 o'clock. Artillery park. An answer is requested.

Judge KANE. What are these papers for?

Mr. VAN DYKE. To corroborate what the witness says.

Judge KANE. When the witness is impeached it will be time enough to corroborate what he says.

Mr. VAN DYKE. I withdraw this paper.

Q. (Letter shown witness.) Did you receive that letter from Mr. McDonald?—A. Yes, sir. He is an officer in the provincial secretary's office.

The letter was here read in evidence, as follows:

PROVINCIAL SECRETARY'S OFFICE, *May* 3, 1855.

DEAR SIR: I am directed by his excellency the lieutenant-governor to introduce to you the bearer, Lieutenant Kuentzel. He comes with letter to Sir Gaspard from Mr. Crampton. You will please explain to him the steps necessary for him to take

[287] to secure his com*mission.

Your obedient servant,

BRUCE McDONALD.

Captain STROBEL,
First Company, Foreign Legion.

Q. (Letter shown witness.) Do you recollect this letter?—A. This is a letter written by Preston to me while I was actively engaged in recruiting men in Buffalo, Cleveland, Detroit, and other places. Mr. Preston had at that time charge of the barracks at Niagara.

The letter was read in evidence. It is as follows:

DEAR SMITH: I send you the accompanying order, in currency, equal to £80 sterling, which please send me a receipt for by return of post. I find I cannot make any arrangement with the railroad people here. They say the tickets had better be paid for at Windsor, which I think is best also, for then the men will come to me clear of expense, which is the intention. Tell Shuman and Dr. Aschenfeldt to telegraph me how they are getting on at once, and how *many*, or if they have got any men. Let me hear also from you.

Yours, truly,

J. W. PRESTON,
Seventy-ninth Regiment.

NIAGARA, *June* 4, 1855.

WITNESS. This Mr. Preston afterward took command of the depot that was established at Niagara town.

Q. This letter says "Dear Smith;" what was the meaning of that?—A. I was obliged to take that name because I was known as being previously connected with enlisting in the States.

Q. (Paper shown witness.) What is this?—A. That is a telegraph I received from Preston.

The paper was read in evidence, as follows:

[288] *[By telegraph from Niagara.]

WINDSOR, *June* 4, 1855.

To Mr. SMITH:

How many men have you got? Money leaves here to-morrow morning by mail, on Upper Canada Bank. Answer immediately.

J. W. PRESTON.

WITNESS. Mr. Preston was the medium between myself and Le Marchant. At Halifax, Preston received the orders from Le Marchant and telegraphed them to me.

Q. (Paper shown witness.) This is another telegraph from Preston, is it not?—A. Yes, sir.

The telegraph dispatch was read in evidence, as follows:

[By telegraph from Niagara.]

WINDSOR CASTLE, *June* 7, 1855.

To Mr. SMITH:

Send in statement of money issued and how applied. Tell the others to send me similar statements; until such arrive, I cannot issue for next month.

[Paid.] J. W. PRESTON.

Q. Go on and state what occurred after you left Quebec.—A. I left Crampton in Quebec, and traveled with Preston and another English gentleman, Captain Bowls, to Montreal; I there received orders for another English officer in Toronto, to give over to us the barracks in Niagara town; Preston took charge of the barracks; I met my officers whom I had sent from Portland to Niagara; they were sent from Portland to Niagara Falls; I met them at Niagara Falls, and directed them to go to different places—to Cleveland, Detroit, and Buffalo; and afterward I sent one non-commissioned officer to Chicago; I was called back; I commenced it about the 4th of June, and I was recalled on the [289] 13th, and arrived *back in Halifax; I was recalled by the officers because during this time I was only able to enlist sixty or seventy men, and Sir Gaspard expected a great many more; and through this, on account of Mr. Preston, and some other officers who were anxious to receive commands in this foreign legion, I was recalled to Halifax; I was charged with having kept two officers on the Canada shore instead of sending them all into the States, and I myself, instead of traveling, and going to Chicago, Cleveland, and all around all the time to every place, was charged with stopping too long in one place, Windsor.

Q. Who made these charges?—A. They were made by Mr. Preston and sent to Halifax.

Q. Who sent to you and told of them?—A. Sir Gaspard Le Marchant. He said that these charges had been made, and that was the reason I was sent for to Halifax. I requested a court-martial, and wrote a long account to Le Marchant. I also sent it to Crampton by a friend of mine, Mr. Ochlschlager; my company was still at Melville Island, under the command of one of the officers I left there.

Q. You saw them there at that time?—A. I was forbidden to see the men, and the men had strict notice not to converse with me; at least the men received such notice the second day I was there. I told the governor-general that, under such circumstances, I would leave, and the ser-
[290] geant was put in irons, and fifty men of my company *sent to prison for conferring with me, by sending to me their non-commissioned officer. I left Halifax with the America, and came back to the States, and since that time I have had nothing to do with this concern. I saw Hertz here afterward. Mr. Crampton took the address of every one of the agents who had been engaged in recruiting at that time in Boston, New York, Philadelphia, and Baltimore, and told me that he was going to see them.

Q. Who did he take as the name of the person in Philadelphia?—A. Mr. Hertz was the man recruiting in Philadelphia.

Q. (By Mr. REMAK.) Who said so?—A. Mr. Crampton took the names of different persons recruiting in different cities.

Q. Whose name did he take as the person in Philadelphia?—A. He knew the names already, but took the address of every one of those gentlemen.

Q. From you?—A. From me, those I had in my possession—the address of Captain Cartensen, of Boston, and other parties in New York; of Smolenski, and the address of a friend of mine in Baltimore.

Q. Did Crampton take the address of Hertz from you?—A. He said he knew all about the proceedings against Hertz, and when he came to Philadelphia he would settle with every one of those gentlemen, and arrange matters in a different way, because he thought proper not to send men by the vessels any more, but by railroad into Canada.

[291] *Q. Do you know about his giving any order about engaging emigrant runners?—A. Yes, sir; he allowed me to pay every runner $4 for a man.

Q. Do you know what Hertz was to get for every man he sent?—A. I do not know exactly the amount Mr. Hertz received; I know he received money, and I know that they said in Halifax that Mr. Hertz——

Mr. REMAK. I object to that.

Q. (By Mr. VAN DYKE.) Did you ever hear Hertz, or any other person or persons in his presence, say that he received any money and how much?—A. Yes, sir, I heard Mr. Hertz say he had received money, but never enough to cover his own expenses.

Q. Did he tell you from whom he received it?—A. He told me that he would receive money from Mr. Howe.

Q. What else did he say to you in reference to this matter?—A. Mr. Hertz told me he had connection with the English government, and that Mr. Crampton and Mr. Howe were the proper agents for paying out the money and giving tickets and giving recommendations for officers to get commissions. Mr. Hertz said so, and said he had instructions from the British government to that effect, and that he would receive head-money for the men. He mentioned Howe and Crampton as persons from whom he received it.

Q. Did he mention any other?—A. Not that I know of.

Q. Was Mr. Bucknell known to Mr. Hertz?—A. He did not
[292] mention him as a person engaged in it, or who had engaged him *in it.

Q. Did he mention any other besides Mr. Crampton and Mr. Howe?—A. Not that I know of.

Q. Not that you recollect?—A. I do not recollect any other person.

Q. (Paper shown.) Is that the report you made to Mr. Crampton of the transaction?—A. That is the report I made to Mr. Crampton.

Q. Was it delivered to him?—A. I sent it to Washington, but the bearer did not find Mr. Crampton there. He had at that time gone up to Niagara. I sent a friend to Washington with this report to Crampton, to let him know everything that occurred.

Q. When he did not find Crampton in Washington, where did he take it to?—A. He took it to New York, and left it with Mr. Stanley, the vice-consul there.

The report was here given in evidence. It contains a full history of the transaction from the time the witness (Strobel) left Halifax until his return. It is as follows:

To His Excellency Sir GASPARD LE MARCHANT,
Lieutenant-Governor of Nova Scotia:

SIR: After having laid before you my plan for raising troops for the British army in the United States and on the Canada frontier, I received from you, at the Provincial Building, Halifax, Nova Scotia, in the presence of his excellency Mr. Crampton, minister from Great Britain to the United States, Mr. Preston, lieutenant seventy-sixth regiment, and officers of the foreign legion, the following instructions:

[293] "You will repair immediately to the United States, accompanied and assisted by Drs. Aschenfeld and Reuss, Lieutenant Shuman, Mr. Mirback, and four non-commissioned officers, to raise men for the British army within the jurisdiction of that Government. You will, in accordance with your plan submitted to me, station said officers and non-commissioned at the posts agreed upon, unless it may, in your judgment, appear expedient to alter the details of said plan. You are also authorized to order back to Halifax any of your assistants who may, in your opinion, be incompetent for the service, or who may neglect the duty assigned to them. You will receive traveling expenses for yourself, officers, and non-commissioned officers, also, before leaving Halifax, the half-monthly pay, as per estimates, in advance, for officers and men. At the expiration of the half-month you are authorized to draw from Mr. Preston the half-monthly pay again in advance, and so on. You are further authorized to draw on Mr. Preston for such sums as you may require for the transportation of men, head-money, &c. You will receive all orders from me through Mr. Preston, whom you will consider as my acting aid-de-camp in this matter, and you will be the medium to transmit those orders to your officers, so that there can be neither interference with nor interruption of the plans laid down by you. Mr. Preston will be commanding officer of the recruiting depot at Niagara town. You will exercise no interference with the transmission of men from Niagara to Halifax, but will confine yourself strictly to the duty of obtaining men in the United States, and of forwarding the same to

[294] Mr. Preston, at Niagara. You are authorized to *employ such assistants as you, in your judgment, may deem necessary, and are further empowered to state, in my name, to any gentleman bringing a certain number of men, say 120, that they will receive from the British government commissions as captains in the foreign legion, and others different commissions, in proportion to the number of men they may bring."

In accordance with the above instructions, I started from Halifax on the 15th of May, accompanied by my officers, as above mentioned. At Windsor, Nova Scotia, I fell in with his excellency Mr. Crampton, Lieutenant Preston, and Captain Bowls, who had left Halifax the same day. We traveled together to Portland, Maine, where we arrived on the 18th ultimo. Mr. Crampton requested me to go with him to Quebec, Lower Canada, as he was desirous that we should have a perfect understanding with, and the full co-operation of, his excellency Sir Edmund Head, governor of Canada. In compliance with this request, I ordered my officers and non-commissioned officers to repair to Niagara Falls, there to await my arrival. We arrived at Quebec on the 20th ultimo, and on the following day were received by his excellency, Sir Edmund Head, and held a conference with him, in which he offered his best assistance in forwarding our object, and at once gave up the barracks at Niagara town as a recruiting depot, and accordingly sent for Major Elliot, which proceedings detained us until the 23d ultimo. On the evening of that day Lieutenant Preston, Captain Bowls, and myself, started, in company with Major Elliot, for Montreal, where we arrived on the morning of

[295] the 24th of May. Arrangements *were then entered into with Colonel Bell in regard to the barracks at Niagara and La Prairie. On the following day I started alone for Niagara Falls, Canada West, where I arrived on the morning of the 27th. Lieutenant Preston and Captain Bowls started for Toronto on the 25th, and hence did not arrive at Niagara Falls till the 28th. These gentlemen remained at Niagara Falls till the 30th, when they took possession of Butler barracks, and the first arrangements were made for forwarding recruits to that station. As your excellency will here ob-

serve, I was, up to this moment, viz, the 30th or 31st of May, unable to move one step in the object of our expedition, it having required all the time to arrange the preliminaries.

On the same day that Mr. Preston left for Niagara town, I learned from Dr. Aschenfeldt and Mr. Shuman that the conduct of two of my non-commissioned officers, Sergeants Roth and Krieger, had been unworthy of the confidence reposed in them, and I therefore deemed it advisable to send the said men to Lieutenant Preston, at Niagara town. I also thought it necessary to send to Niagara one of my officers, for a double purpose: 1st, to act for Mr. Preston as interpreter on the arrival of recruits, and, 2d, as we were unable, actually, to enlist the men in Canada, I deemed it well that some
[296] German of experience and age should be with the recruits sent on to *keep them in proper spirits, and to prevent any loss by desertion from the barracks or *in transitu* to Halifax. I accordingly deputed Mr. Mirback for this service, and, with the license permitted me in your instructions of the 14th of May, was therefore obliged to modify my plan to suit this emergency. On the 30th instant I went with Lieutenant Shuman to Buffalo. Having visited some of the localities in that place and Fort Erie, on the opposite shore of the Niagara River, I gave Lieutenant Shuman the following orders, in accordance with the instructions I had received from Mr. Crampton, and which I respectfully beg leave to subjoin: 1st. I ordered Mr. Shuman to take up his quarters on the Canada shore, at the village of Fort Erie. 2d. To have his non-commissioned officer, Corporal Kamper, stationed in Buffalo. 3d. To go daily to Buffalo, and, in connection with Corporal Kamper, there to make such inquiries as might lead to the obtaining of men. 4th. To send the men as quickly as he should obtain them to Lieutenant Preston, at Niagara, and at the same time to report to me regularly the number of men obtained, and all circumstances relating to them. 5th. To take particular pains to lay out no moneys on the American side, but whatever related to the expendi-
tures to induce runners to bring men to him should be positively and rigidly
[297] *transacted on the Canada shore; and further, if it were necessary to keep men together for a longer term than one day, to be careful to do so without the precincts of the United States. This latter order is strictly in accordance with articles 2d and 4th of Mr. Crampton's instructions. On the same evening, May 30, I ordered Dr. Reuss to leave for Detroit, and informed him that he would co-operate with Dr. Aschenfeldt, who would be stationed at Windsor, on the Canada shore of the Detroit River. I also communicated to him, in effect, the same orders I had already given to Mr. Shuman. I went to Niagara town to draw the half-monthly advance pay for officers on the 31st May. As Mr. Preston was unable to pay me the amount which I required, he gave me but £40 sterling. On the 1st June I left Niagara town, accompanied by Dr. Aschenfeldt, for Cleveland, Ohio, where I had already stationed Sergeant Barchet. Passing through Buffalo, I saw Lieutenant Shuman, and supplied him with some money for a few days, until I should obtain the balance of the half-monthly pay from Mr. Preston. On the 2d instant I saw Barchet in Cleveland, and supplied him with as much money as I could spare. On the 3d I arrived with Dr. Aschenfeldt at Detroit; I saw Dr. Reuss and supplied him with money. I then supplied Dr. Aschenfeldt with money, and left him at Windsor. On the 4th of June I again started for Niagara town, in order to receive from Mr. Preston the balance of the second half-monthly pay, which, I must here remark, was a most useless journey, both as regards the expense and the loss of
time. Had the money been properly forthcoming in the first instance, this journey
[298] would have *been avoided; but I was determined, as I was now obliged to go there, to make use of the journey as a means of again visiting the different posts and paying to the officers the balance of their half-monthly dues. In this I was again frustrated by a failure of the telegraph-office in sending me a dispatch of Mr. Preston, as a check had already been sent by mail for the amount. In spite of this, however, I telegraphed from Niagara to Mr. Shuman to meet me at Chippewa and report to me the result of his proceedings in Buffalo. His report was, much to my regret and contrary to all my expectations, very disheartening, he having sent but four or five men to Niagara. Having learned by letter from Albany, New York, that there was a fair prospect at that place of obtaining from fifty to one hundred men, I ordered Mr. Shuman to direct Corporal Kamper to undertake the whole business in Buffalo and to repair at once to Albany, there to place himself in connection and communication with the emigrant offices and intelligence depots there, and to use his most strenuous efforts to obtain men.

Also to communicate with me at once on the subject. As I have already stated, the
[299] check for the balance of the pay had been sent to Windsor while I was *in transitu* between that place and Niagara. I was, therefore, without money, and gave Lieutenant Shuman a draft on Mr. Preston for £20 sterling, knowing that it would require at least three days for me to forward the money from Windsor to him. On presentation, Mr. Preston refused to honor the draft. Considering that these matters would be in proper train in Buffalo, and supposing that Shuman would leave at once for Albany, I returned to Windsor, Canada West, in order to receive a report from Sergeant Barchet, stationed at Cleveland, and to inform myself how matters were progressing in Detroit. I returned to Windsor, Canada West, on the evening of the 7th instant. On

the following morning, to my utter astonishment, Mr. Shuman, who was kept by Mr. Preston at the depot, and in consequence of it was not able to see his men off at Buffalo again, nor to supply him with money, and to give him orders in regard to my sending Mr. Shuman to Albany, had left Niagara, by order of Mr. Preston. The night-train came into Windsor in sixteen hours after my arrival, bringing me the subjoined order from Mr. Preston, marked X. As the order purports to have emanated from your excellency, I promptly obeyed the same, and sent Mr. Shuman to Cleveland for Barchet's
[300] account, *at the same time giving him those of Drs. Aschenfeldt and Reuss and my own, giving him no further orders, but simply telling him to return to Mr. Preston as soon as possible. I had received from Barchet the information that matters in Cleveland were as disheartening as in Buffalo, also saying that a Mr. Seybert, who keeps an intelligence-office there, was willing to undertake the business, if we could station some one at Fort Stanley for the purpose of receiving men whom he would send there. I wrote to Mr. Preston, requesting him to send a non-commissioned officer or some other person to Port Stanley to receive the men whom Mr. Seybert might send. This request was unattended to, and Mr. Preston did not even condescend to notice.

From all that I could learn, Chicago and Milwaukee offered large inducements as a field for our operations, and as I thought the port of Cleveland would have been provided for by Mr. Preston, in accordance with my request, I sent Barchet on the 11th instant, in company with another man, to Chicago, also Dr. Reuss to Toledo, which place I had myself visited, and deemed a good port for obtaining men. I directed Barchet to communicate with me by telegraph or otherwise as soon as my
[301] presence and the money for *tickets should be requisite in Chicago for bringing men to Niagara.

On this day, the 11th instant, Mr. Theo. A. Oehlschlager arrived at Windsor from Niagara Falls. Mr. Oehlschlager is a gentleman already known to Mr. Crampton, and of whom Mr. Crampton and myself had several conversations. I spoke very favorably of him, and Mr. Crampton advised me to obtain so valuable an assistant. Mr. Oehlschlager is a British subject by birth, being a native of Quebec, Lower Canada. Speaking German like a native, and French with fluency, the value of his assistance cannot be overestimated. Having, as I have already stated, lost two non-commissioned officers, and having stationed one officer permanently with Mr. Preston, I felt the necessity of more assistance, and knowing no one more competent, I accordingly wrote for him from Cleveland on the 2d June. I remained at Windsor the 12th and 13th instants, in the expectation of receiving a letter from Barchet, and also anticipating the return of Dr. Reuss from Toledo with men. On the morning of the 13th I received a letter from Barchet, stating that Chicago was a capital place, and that a great many men might there be obtained, but it would be necessary to forward
[302] them immediately, as *it would be impossible to keep them long together. I accordingly wrote at once a letter to Mr. Preston, requesting him to send me £100 sterling. Before this letter was mailed, I received the following dispatch from Mr. Preston: "Send Aschenfeldt back immediately." I accordingly did so, sending the letter I had written by Dr. Aschenfeldt. On the following day Dr. Reuss returned from Toledo, and bringing with him four men, stating at the same time that a number of from 80 to 100 men may be obtained alone in Toledo. He also brought very good news from Sandusky and Monroe. I then received a dispatch from Dr. Aschenfeldt saying, "We all go back; more by letter." Having collected some eleven men at Windsor, besides seven already forwarded from this place to Niagara, and deeming the expedition from some unknown cause entirely broken up, I telegraphed to Mr. Preston, asking what I should do with the men. His answer was, "Forward men. Recall Barchet, and return to-morrow." Not comprehending the whole business, I deemed it best to repair at once to Niagara and have the mystery cleared up. I accordingly started the next morning, leaving Mr. Oehlschlager in my place at Windsor. I arrived at Niagara on the morning of the 16th. I was cordially received by Mr.
[303] *Preston, who informed me that, having held several conversations with Major Browne, Mr. Wieland, and other gentlemen, he had come to the conclusion that we (myself and the officers under my charge) had neglected our duty, and that he had two charges in particular to make against me: 1st. That I had ordered two of my officers to remain on the Canada shore; 2d. That I myself had remained too long inactive at Windsor, Canada West. In consequence, he had deemed it his duty to send a dispatch to your excellency, acquainting you with said disposition on our parts. That you had replied, directing him to act on his own responsibility. That thus empowered, he had deemed it proper to recall all those employed, and to send them back to Halifax. I informed Mr. Preston that I would at once comply with the order of your excellency; at the same time I assured him of my opinion as to the unadvised and rash proceedings he had deemed it proper to adopt, and further expressed my belief in his having been influenced in these measures by Major Browne, Mr. Wieland particularly, and others, who are anxious, to my perfect knowledge, to obtain commands in the foreign legion. While in Niagara town, I saw a dispatch from this Mr. Browne to Lieutenant Preston,

[304] stating *in effect that my letter to Mr. Preston on the 13th instant was a falsehood, and that there was no men in Chicago to be sent. The following is, I think, the wording of the dispatch: "The fifty men a myth." Having some little personal business in Windsor, and wishing to communicate with Mr. Oehlschlager, I returned here this morning. On my arrival, Mr. Oehlschlager informed me that, shortly after my departure on the 15th instant, a Mr. Browne arrived here from Mr. Preston. He represented himself, or at least led Mr. Oehlschlager to believe, that he was a major in the British service. Mr. Oehlschlager, under such a supposition, believing him to be an officer in the British army, and an authorized agent of your excellency's, immediately gave up the charge of the post and of the men. Mr. Browne sent the men on to Niagara that evening, in charge of Dr. Reuss, who left yesterday for Halifax. I also found here a dispatch from Chicago, from a man named Konen, employed by me at that place, which fully substantiates the good news contained in Mr. Barchet's letter. It reads as follows: "Come here immediately; twenty ready; tickets wanted."

I have thus far, your excellency, attempted to give a rough outline of what [305] I have done since *my departure from Halifax, and shall now leave it with yourself to judge whether the time has been wantonly thrown away, and whether I have neglected my duty or not. There have, it is true, been many causes which have rendered the expedition less successful than I had imagined in the offset, but over these circumstances I have, as you may judge from the above statement, been able to exercise but little or no control. Besides, your excellency will be pleased to take into consideration that we have not had more than eight or nine working days of real trial. We did not get fully into operation before the 4th or 5th. On the 7th, Mr. Shuman was withdrawn, by order of Mr. Preston. Not before the 9th the bills we had printed were in our hands and posted. The 10th was Sunday. On the 13th the expedition was virtually broken up, Dr. Aschenfeldt recalled, and your excellency in possession of a dispatch to that effect.

The difficulties under which we had to labor were, in the beginning, very great. In the first place, shortly before our arrival, the navigation of the great lakes was opened, and thousands of men who had been idle for months were at once thrown into [306] employment. A week before Mr. Shuman arrived at Buffalo, *six hundred workingmen had been withdrawn from that place to work on the telegraph line through Newfoundland. In short, work was plenty and the weather mild; it is, therefore, but little wonder that under such auspicious circumstances we did not succeed at once. Then the Americans have, in every city in which we have been, a recruiting officer, where they offered $12 per month and bounty of one hundred and sixty acres of land, and besides giving head-money to the runners. Again, a great antipathy appears to prevail throughout the United States to British service, and a strong mistrust of the whole business, from the occurrence relating thereto which took place in the Eastern cities. These difficulties had to be overcome, and just when we arrived at a point where the prospects began to brighten, and we had tangible hopes of our ultimate success, the whole matter, as far as ourselves are concerned, is given up, without my being in the slightest instance consulted or advised with. From certain remarks of this Mr. Browne, I am led to believe that the conduct of the money matters of the expedition has also been called in question. In refutation of any [307] such malignant charge, I respectfully beg leave to subjoin my accounts, and *request that those of my officers may be strictly examined.

A few words in relation to the charge made against me by Mr. Preston. The first is simply enough refuted by all that part of the above statement which refers to my orders and instructions to Dr. Aschenfeldt and Mr. Shuman. Of the second, I have but to observe, that when I started from Halifax I was under the impression that I was given charge of this expedition in the United States, that I had discretionary power to take up my headquarters where I deemed best, and where I could most readily hear from my assistants, and not that my conduct was to be subject to the espionage and impertinent interference of men of whom I had no knowledge whatever, in connection with this expedition. I refer to Mr. Browne and others. Nor can I conceive how Mr. Preston could commit such a gross error as he has done, in breaking up this expedition, without stronger and more sufficient reasons.

I have now to make a few remarks on Mr. Preston's conduct in connection with this business which, however painful it may be, I consider it my duty to your excellency, under whose orders I have been engaged in this matter, and to myself. Mr. [308] Preston, in the first place, as early as the 7th instant, *violated the spirit and letter of your instructions to me in two instances. First, by failing to pay my draft sent by Mr. Shuman, and, secondly, by sending Mr. Shuman down to Windsor when I sent him to Albany. In short, I have failed to meet from Mr. Preston that cordial cooperation and friendly assistance which I had hoped for, and on which the success of such an expedition so eminently depends. I feel pleasure, however, in saying that I can look upon this failure on the part of Mr. Preston in no other light than as an error of judgment, and his being too easily influenced by others.

With the above statement of the facts of the last month, and which I am ready to

substantiate at any moment by the testimony of my officers and others, I beg leave to submit this my report to your excellency's kind consideration.

I have the honor to remain your excellency's very obedient servant,

MAX FRANZ OTTO STROBEL,
Captain Foreign Legion.

WINDSOR, C. W., *June* 18, 1855.

Mr. REMAK. Was this paper ever delivered?—A. It was delivered to Mr. Crampton and Sir Gaspard Le Marchant.

Mr. VAN DYKE. Did Mr. Hertz say anything to you in refer-
[309] ence to having advertised in any *paper in Philadelphia?—A. Yes, sir; the advertisement was in Mr. Hertz's office in the newspapers.

Q. Did he say anything to you as to his advertising?—A. He said he was obliged to have it advertised in order to get men.

Q. What advertised?—A. This proclamation. Mr. Hertz sent men to the office of the paper to see if it was advertised.

Q. When was that?—A. I cannot recollect the very date; it was before I went away with my company.

Q. Do you recollect the advertisement?—A. Yes, sir; I recollect the advertisement. I have seen it in the paper, but do not recollect the very day.

Q. What do you know of Mr. Hertz putting this (showing witness the Pennsylvanian containing the advertisement) in the paper?—A. Mr. Hertz says, "I suppose by this advertisement we would get some men."

Q. Where did you last see Hertz before sailing from Philadelphia with your men?—A. I saw Mr. Hertz on the boat. He came down in the morning to the wharf where we sailed from, and it was at that very moment that he gave me the money, $25.

[310] *Q. On the boat Delaware, on which you sailed on Sunday morning of March 16, 1855?—A. Yes, sir.

Q. Will you state to the court and jury whether you recommended to Mr. Crampton a certain Colonel Burgthal?

(Mr. REMAK objected. Objection was sustained.)

Q. (By Mr. VAN DYKE.) Is there anything else you recollect in connection with Mr. Hertz that you have not stated; if there is, state it; any conversations that you had with Mr. Hertz or Mr. Crampton about Mr. Hertz being engaged in this business?—A. I remember a conversation with Crampton about Hertz, where Crampton said he believed——

The question and answer were ruled out.

Q. Do you recollect any conversation Mr. Hertz had with any person or any conversation you had with him?—A. I heard many conversations of Mr. Hertz with other officers who left for Halifax. It was a promise Hertz made to these men in the name of Mr. Howe, and, through Mr. Howe, in the name of the English government, to give them commissions in the foreign legion if they would go to Halifax, if they were military men before, and so on; and when some of them would express
[311] doubts on the *subject, Mr. Hertz would try and prove that he had really the power to promise.

Q. Anything else?—A. I remember there was some money given to the men by Mr. Hertz.

Q. Which men?—A. To the men who enlisted.

Q. What was money given them for?—A. To pay board to the very day they sailed—from the time of enlistment to the time of leaving.

Q. Who paid for the tickets?—A. I suppose Mr. Hertz; I do not know.

Q. Who gave the tickets?—A. Mr. Hertz did.

Q. For the seventy-eight you took?—A. Yes, sir.

Q. You say you had a hundred in your company; how happened it that you only took that number?—A. Afterward some men were sent from Philadelphia.

Q. How did it happen that you first had one hundred men and only took seventy-eight with you?—A. The other parties came on afterward, and were put to my company as they came on, particularly men from Philadelphia.

Q. What became of this company?—A. It sailed on the 8th of August for Portsmouth, England, to equip for its destination.

Q. (Cards shown witness.) What are these?—A. These are the
[312] cards which were given to the *men to get a passage on board the boat. Mr. Hertz got the cards; I do not know where he got them from.

Q. What is that on it?—A. It is H.

Q. Whose signature is it?—A. Mr. Hertz.

Q. What is the meaning of N. S. R. C.?—A. It means Nova Scotia Railroad Company, I suppose.

The ticket was given in evidence; the following is a copy.

N. S. R. C.
H.

Q. Did you take these tickets all the way to Nova Scotia?—A. Every man had one of those tickets, and they passed him on the boat.

Cross-examined by Mr. REMAK:

Q. Did you go to see Mr. Hertz of your own notion, or did anybody request you to go and see him?—A. I was requested by Dr. Biell to see Mr. Hertz, as I had seen Crampton only a few weeks before.

Q. Did you know Hertz before that time, before Biell mentioned his name?—A. No, sir.

Q. You did not know him at all?—A. No, sir.

Q. You had already seen Mr. Crampton at the time Biell spoke
[313] to you?—A. Yes, sir; Biell told me Hertz had a letter which *he had shown him.

Mr. REMAK. There is no use saying that; you saw Hertz on the 10th of March?—A. Yes, sir.

Q. Where did you see him?—A. At his office, 68 South Third street.

Q. Did you know the business of Mr. Hertz?—A. Yes, sir; he was enlisting men for the foreign service; Mr. Hertz himself said so when I came up there.

Q. Was it not at his office you said people came in and enlisted, and entered their names in a book?—A. Yes, sir.

Q. (Showing book.) Here is the book presented to you; do you swear that this is the identical book you saw there?—A. Yes, sir.

Q. Were all the names here entered by the persons, or by whom?—A. Not exactly all these names; many of the men signed the names themselves, and others could not write, and Mr. Hertz or somebody wrote down the names.

Q. Now, be so good as to describe this book; does it contain anything but the names and places of residence?—A. It contains the names of those men, most of them I took with me as my company to Halifax.

Q. And contains the residence of some?—A. Yes, sir, of some.

[314] Q. It contains nothing else?—*A. It contained at that time the

names of several officers willing to go; it contains now but those names.

Q. You say you received money from Mr. Hertz?—A. Yes, sir.

Q. For what purpose?—A. I received money from Mr. Hertz, and was obliged to give him a kind of note, in which I stated I had received so much money, and it would be repaid.

Q. (Showing witness a paper.) Is this paper signed by you?—A. Yes, sir.

The paper was read as follows:

I received from Mr. Hertz $5.00 on my word of honor.

MAX. O. STROBEL.

Mr. REMAK. The figures are blotted, and it looks as if it had been altered from $5 to $25.

WITNESS. The signature is true, but I believe the 25 is false. I actually received on my word of honor, from Mr. Hertz, $10, but I never remember having given Hertz a receipt for this $25 I received on board the boat; I never remember, but there is a possibility.

Q. You stated in your examination-in-chief that you received $25 the day you started?—A. Yes, sir, I received $25 that day.

Q. You state now you do not remember having given a re-
[315] ceipt for it?—*A. I do not remember. I acknowledge this signature. That might be another note I gave to Hertz stating I only received $5. This is my signature.

Q. You received $25 on that day, and this paper states in numbers 25?—A. It states here $25. I do not recollect signing any paper for $25. I recollect saying to Mr. Bucknell I received that money.

Judge KANE. Is this material?

Mr. REMAK. It is for the purpose of showing that money has been loaned to the witness.

Q. You say you were present when several different men came in at different times and signed their names in that book. What were the conversations between Hertz and those persons?—A. The conversation was, that he showed the parties the proclamation or advertisement, and he said there is a foreign legion, as you see, in Halifax, and if you feel able and disposed to enter this foreign legion in Halifax, I will give you the means to go to Halifax as a soldier in that legion; that is, if you are willing to go to Halifax and be enlisted for this foreign service.

Q. Can you swear that Hertz ever said to enlist as a soldier for the foreign service?—A. I can swear that he said he wanted them
[316] *to go Halifax for the purpose of enlisting for British service.

Q. Did he pay anything to them?—A. He paid to several of them, but not every one; to some of them he paid $1, to some 25 cents, and to some 50 cents.

Q. Do you recollect the names of any of the men to whom he gave 25 cents?—A. To Purde and several others; their names are in the list.

Q. Were any of those people very poor?—A. Yes, sir, some of them were.

Q. Did you know that these people were actually in want of food?—A. Not in want of food.

Q. Do you believe that these people had any money at all?—A. I believe they had none.

Q. Were they not looking out for work?—A. They had been looking out for work.

Q. And could they get it?—A. They said they could, but, as they were detained, they must be paid.

Q. They could get work, they said?—A. If they would not be retained.

Q. Did these people use the word retained?—A. They said they
[317] could get work if they were *not kept waiting here doing nothing, and being promised every day that this vessel should sail for Halifax.

Q. Then these people did not employ the expression retained?—A. Well, they were retained.

Mr. REMAK. You have to give the conversation exactly as it took place; be very strict; what language did these people speak?—A. In the German.

Q. Then they had no idea of the word "retained?"—A. We have a word in German that means as much.

Q. What is it?—A. "Angeholten."

Mr. REMAK. May it please your honor, that word means detained.

Q. Did not these people mean to say that their time was wasted by being unemployed?—A. No, sir, they said or meant, by saying so, that their time was taken by Mr. Hertz.

Q. Did not some people come into the office who declined to go to Halifax?—A. Not that I remember. Some of them came once, but never afterward.

Q. What did Hertz say when they declined, if you recollect
[318] they did decline?—*A. I do not remember that any one declined.

Q. Did Mr. Hertz offer them anything the moment he spoke of going to Halifax?—A. Not at that moment.

Q. Mr. Hertz did not offer them anything when he asked them to go to Halifax?—A. No, sir.

Q. Did he actually ask them to go to Halifax?—A. Yes, sir.

Q. Did he not leave it optional? Did he not represent the matter that they would get employment there?

WITNESS. Get employment in Halifax?

Mr. REMAK. Some employment.

WITNESS. No, sir, that could not be, because this advertisement was lying on the table, and for that purpose the men came up.

Q. When the men came in, you say Hertz did not offer them anything; when they were ready to go to Halifax, what did Hertz say?—A. Mr. Hertz said, I have a vessel ready for you to start in a day or so.

Q. Did he state for what purpose this vessel would start?—A. For conveying these men to the foreign legion at Halifax.

[319] Q. You stated that he gave some of the *men $1, and some 25 cents; to how many of the men did he give anything at all?—A. It is very difficult to say.

Q. Did he give to twenty?—A. I suppose that is the number.

Q. Have you been present every time he gave these men something?—A. Not every time, but he gave to that many in my presence.

Q. Then you remember that he gave to more than twenty?—A. Not to more than twenty. I cannot say that he gave to more than twenty.

Q. Then you do not know if he gave to any one else?—A. No, sir.

Q. The names you remember mention now.—A. Barrier, Blecher, Brining, Foley, Worrell.

(The court here overruled the question.)

Q. You stated, in your examination-in-chief, that some of the men received money to board?—A. Yes, sir.

Q. How much did they receive?—A. I cannot tell whether Hertz gave three shillings or four shillings; to some he gave three, some four, and perhaps some a dollar.

[320] *Q. Did Mr. Hertz ever promise you a commission?—A. Yes, sir.

Q. Where did he promise you?—A. In his office.

Q. In whose presence?—A. In the presence of Mr. Rumberg and Lieutenant Essen.

Q. Did he show you any authority for doing so?—A. I believed he had, because he made me himself acquainted about the letters and orders he had received from the British government, and I showed him my letters, although I never saw his letters. He promised me a commission.

Q. Did Mr. Hertz derive any benefit from all the transactions you know of?—A. I cannot tell.

Q. You remember that you said, in you examination-in-chief, that Mr. Hertz said himself that what he had received did not cover expenses?—A. At that time.

Q. Do you know, from your own knowledge, that Hertz has received, at any other time, any more money?—A. I cannot swear that Hertz received more money than he expended, but I can swear he received money.

Q. Then he did not derive any benefit from his business trans-

[321] actions?—*A. I do not know.

Q. As far as you know?—As far as I know, no; but I cannot see into his business matters, certainly.

Q. Could Mr. Hertz have any direct benefit from the fact of any of those men going to Halifax?—A. Yes, sir.

Q. In what manner?—A. He would receive $4 for every head.

Q. Would the $4 come from the man himself?—A. No, sir; it would be paid by the English government; the man could not pay, but the English government paid $4 for every head.

Q. Can you say whether any agreement has taken place between Hertz and you, or with any of these men with regard to the transaction?—A. Yes, sir.

Q. What was the character of it?—A. The agreement was, that I take this company to Halifax, and I was introduced to the men of the company as their captain; and I had to bring them up to Halifax.

C. Did you derive any benefit from this matter? You received money, did you not?—A. I received no money except that necessary to take the men to Halifax, and their tickets.

[322] * You received no money?—A. No money for myself, but money to take the men there for the government.

Q. You received no money for yourself?—A. No money for myself from the government. What I received for doing this was the commission.

Q. Did you receive from Hertz any money?—A. I received, as a private matter, $10 from Hertz; but I received $25 to feed the men on the boat.

Q. Then, Mr. Strobel, had you any direct authority from the English government at the time?

WITNESS. Direct authority to do what?

Mr. REMAK. Any direct authority at all. I do not care what it is. Did you hold any commission?—A. Just the commission as promised by Hertz.

Q. You had no commission?—A. I had no commission at that time.

Q. Then you cannot say you was at the time the representative of the English government or agent of that government?—A. Certainly I was

insomuch an agent that I agreed with the English government to bring men to Halifax.

Q. You considered yourself so?—A. I did not consider, I thought so.

Q. When did you agree with the English government?—*A.
[323] So early as the beginning of April, with Mr. Crampton.

Q. Did you agree to take the identical men you started with on the 25th of March?—A. No, sir, not those men, but any men.

Q. Then you had no other authority but what you thought you had from Hertz, when you took these men?—A. Not for bringing these very men I named here.

Judge KANE. The witness says he had authority from Mr. Crampton to take such men as should be enlisted, and that it was from Hertz that he got the directions of the particular persons enlisted and who were to be carried on.

Q. Did you make any promise to Hertz in return for the so-called authority he gave you?—A. Yes, sir.

Q. What was the promise?—A. I promised Mr. Hertz that, upon arriving in Halifax, I would state that Mr. Hertz had sent these men, and that he had a great many more men, and had made arrangements with parties in New York, but was not able to send them, and I was to secure him every man he sent from Philadelphia to Halifax.

Q. Did you ever pay to Mr. Hertz afterward anything for the
[324] trouble he took to send men to Halifax?—*A. I did not.

Q. Do you know whether anybody else paid Hertz for the trouble he took on that day, or any other time?—A. I do not know; I know that Hertz received money for the men in New York.

Q. Did you ever see Mr. Crampton in the presence of anybody else?—A. Yes, sir.

Q. Who was present?—A. I saw Mr. Crampton in the presence of Dr. Reuss; for instance, Major Boutz, Sergeant Burgit, and Rose, and others; I traveled with Crampton and Preston, in company with other gentlemen, up to Quebec from Halifax; these instructions were in the handwriting of Crampton.

Q. I want to know if Hertz ever read those instructions?—A. I do not know whether Mr. Crampton sent him a copy of them or not.

Q. Then you do not know whether he had ever any knowledge of these instructions?—A. They were written after I left here, and I could, therefore, not tell.

[325] *MONDAY'S PROCEEDINGS.

September 24, 1855.

HORACE B. MANN, sworn.

Examined by Mr. VAN DYKE:

Question. Are you engaged in the Pennsylvanian office?—Answer. Yes, sir.

Q. (Paper shown witness.) Do you know whether that advertisement was ordered to be published there?—A. As regards ordering the advertisement, I do not know anything about, but that is a copy of the Pennsylvanian.

Q. Do you know anything about the discontinuing of it?—A. Yes, sir; it was ordered to be discontinued by Mr. Hertz; I discontinued it at his order.

Q. Is that the receipt for the advertisement?—A. That is the receipt for the payment of that advertisement; Mr. Magill is the person who re-

ceived the advertisement; the paper in which it appears was published March 16, and the receipt is dated March 15.

[326] * The receipt was here read in evidence as follows:

PHILADELPHIA, *March* 15, 1855.

Lieutenant-Governor of Nova Scotia—
To advertising in the Pennsylvanian,
2 squares for one month..... $5 00

Received payment, for the proprietor,
WM. MAGILL.

MAX F. O. STROBEL, recalled.

Examined by Mr. VAN DYKE:

Question. You have been sworn?—Answer. Yes, sir.

Q. You are acquainted with the handwriting of Mr. Howe?—A. I have seen it.

Q. What position did he hold in March and February, 1855?—A. He was the general agent of the British government in the States for this recruiting.

Q. (Paper shown witness.) Will you look at that paper and say whether it is in his handwriting?—A. I believe it is Mr. Howe's handwriting; I have seen him write.

The paper was here read in evidence, Mr. Van Dyke stating it was the original of the advertisement which appeared in the papers in regard to this matter. It is as follows:

The lieutenant-governor of Nova Scotia is empowered by Her Britannic Maj-
[327] esty's government to *raise any number of men which may be required to serve in the foreign legion.

Depots are established at Halifax, and all able-bodied men, between the ages of twenty and thirty-five, who may present themselves, will be enlisted.

The terms of service will be three or five years.

Officers who have seen service are eligible for commissions.

Surgeons speaking the continental languages, or some of them, will be required.

Pensions or gratuities for wounds or eminent services in the field will also be given.

On the expiration of the term for which they enlist, the troops will be sent to their native countries or to America.

Q. You said you are acquainted with Mr. Crampton's handwriting?—A. Yes, sir.

Q. (Paper shown.) Is that his writing?—A. That is Mr. Crampton's handwriting.

Q. (By Mr. CUYLER.) You have seen him write, you say?—A. Yes, sir.

The paper was here read in evidence, as follows:

SATURDAY, *January* 27, 1855.

SIR: I should be happy to see you at any time you may choose to call, to-day or to-morrow.

I am, sir, your most obedient servant,
JOHN F. CRAMPTON.

Mr. HERTZ.

[328] [*Envelope.]

Mr. HERTZ,

J. F. C. Willard's.

Q. (Another paper shown.) Is that also in Mr. Crampton's hand writing?—A. Yes, sir, that is Mr. Crampton's handwriting.

The paper, which was read, is as follows:

WASHINGTON, *February* 4, 1855.

SIR: With reference to our late conversation, I am now enabled to give you some more definite information on the subject to which it related.

I am, sir, your obedient servant,

JOHN F. CRAMPTON.

H. HERTZ, Esq.

[Envelope.]

Paid. J. F. C.

Washington, February 4, D. C.

H. HERTZ, ESQ., 424 North Twelfth street, *Philadelphia.*

Q. Do you know Mr. Wilkins's handwriting?—A. Yes, sir.

Q. Is he provincial secretary?—A. Yes, sir.

Q. (Paper shown witness.) Is that his writing?—A. It is. I have seen him write; that is his signature on the back of it.

Q. Do you know whether Hertz was in Halifax in June?—A. Yes, sir, he was in Halifax in June.

[329] Q. Do you recollect the day?—*A. I cannot recollect what day; it was in the beginning of the month.

Q. In whose handwriting is the direction on the envelope?—A. I believe it is Wilkins's too.

The paper, with envelope, was read in evidence as follows:

PROVINCIAL SECRETARY'S OFFICE,
June 11, 1855.

SIR: I am in receipt of your letter of this date, and am commanded by his excellency Sir Gaspard Le Marchant to inform you that, in reference to the claim advanced in your communication, Mr. Howe, previous to his departure for England, distinctly stated to his excellency that the moneys which you had received on account more than canceled any claim that you might prefer.

Any instructions given to Mr. Howe by Sir Gaspard will speak for themselves, while Mr. Howe will best account for his own acts on his return from England.

In his absence, nothing can possibly be done by Sir Gaspard in relation to yourself.

You must consider this a final answer, given by his excellency's command.

I have the honor to be, sir, your most obedient servant,

LEWIS M. WILKINS.

Mr. H. HERTZ.

[330] *[Envelope.]

[On Her Majesty's service.]

Mr. H. HERTZ,

Provincial Secretary's Office.

Q. Are you acquainted with the British secretary of legation?—A. Yes, sir; I have seen him.

Q. Do you know his handwriting?—A. I have seen his writing, but never saw him write. I never had any conversation with Mr. Lumley.

I always addressed my letters to Mr. Crampton or Mr. Lumley. I never received any replies from Mr. Lumley.

The defendant's counsel admit the paper to be in the handwriting of Mr. Lumley, and it is read in evidence as follows:

WASHINGTON, *May* 31, 1855.

SIR: In the absence of Mr. Crampton, I beg leave to acknowledge the receipt of your letter of the 20th instant. Although I am not aware that I have had the advantage of making your acquaintance, I beg to inform you, as secretary of H. M. legation, that no charge against you of the nature to which you refer has been made to me. It is, therefore, superfluous to add that I have never expressed the opinion reported to you as having been used by me.

I am, sir, your most obedient servant,

T. SAVILLE LUMLEY.

[331] [Envelope.]

Paid T. S. L.	
Washington,	HENRY HERTZ,
May 31, 1855.	424 N. Twelfth steet, below Coates.
D. C.	*Philadelphia, Pa.*

Q. Did you know the vice-consul at New York?—A. Yes, sir.

Q. What is his name?—A. Mr. Stanley.

Q. Do you know his writing?—A. Yes, sir; I have seen him write.

Q. (Letter shown witness.) Is that a letter of Mr. Stanley's?—A. Yes, sir.

The letter and envelope was read in evidence as follows:

NEW YORK, *June* 19, 1855.

SIR: I am obliged to you for the cutting from the newspaper which you forwarded with the note of the 17th, both being received by me yesterday. I do not understand the spirit evinced by the writer of the newspaper paragraph. I am not yet aware of any United States laws being broken in the matter to which he has reference, and have not the slightest interest therein.

Regarding your claim against the Nova Scotia government, I have not received any communication from that quarter, as you led me to expect would be the case. As I informed you when in the city, it is not possible that I should be acquainted with the subject; but, if so ordered, I shall be happy to remit you the amount.

[332] I have seen Mr. Mathew, who happened to be in New York, being in hopes that I might procure through him some information which would aid you in this matter, but being unsuccessful in obtaining any, it is utterly out of my power to forward your views.

Remaining your obedient servant,

C. H. STANLEY.

[Envelope.]

New York,	Mr. H. HERTZ,
June	424 North 12th street,
19	*Philadelphia.*

Q. (A card here shown witness.) Do you recollect that card?—A. Yes, sir.

Q. It is written in what language?—A. In German.

Q. Do you know whose writing it is in?—A. It is a card written by Mr. Benas, at the request of Mr. Hertz.

Q. Who was Mr. Benas?—A. He was at that time with Mr. Hertz.

I do not know Mr. Benas himself. He was with Mr. Hertz, and this was brought to me by a man who came up to Halifax and enlisted in my company.

Q. Did he go with you?—A. No, sir, he was sent to my company at Halifax, by Mr. Hertz, and he brought this card to me, recommending this man to me as secretary of a company.

Q. This man was enlisted in your company?—A. Yes, sir.

Q. Before you left?—A. No, sir.

[333] *Q. He came on after the company left here, then?—A. Yes, sir.

Q. (By Mr. CUYLER.) Did you see this card written?—A. I could not have seen it because I was in Halifax, and this man brought it up there.

Q. Do you know Mr. Benas who signs it?—A. I know him now; I did not know him at that time.

Q. Are you familiar with his writing?—A. I never saw him writing, and cannot say of my own knowledge that this card is in his writing, but it was brought to me from this very man.

(Mr. Cuyler objected to the reading of the card in evidence.)

It was shown to the jury, but, as it was in German, few read it. We present a translation:

I recommend to you the bearer of this card, Mr. Sporer, an excellent and perfect penman. If it lies in your power to obtain for him a position as clerk in your company, you will thereby greatly serve me.

M. BENAS.

By request of H. Hertz.

Q. Do you know Turnbull?—A. Yes, sir.

Q. What was he in June, 1855?—A. He was at that time an agent for Mr. Crampton.

Q. Where is he located?—A. He was sent to the West, to Cincinnati, to aid Colonel Korponay.

[334] *Q. (Letter shown to witness.) Is that his letter to you?—A. That is Mr. Turnbull's letter to me from Cincinnati.

Mr. Van Dyke offered the letter in evidence.

(Mr. Cuyler objected. The objection was sustained, and the letter ruled out.)

CHARLES RUMBERG sworn.

Examined by Mr. VAN DYKE:

Question. What is your business?—Answer. I have been editor of the Philadelphia German Democrat, and I am now editor of a German paper at Pottsville, and co-editor of the Adopted American here.

Q. Will you state whether you have ever been in the army?—A. Yes, sir, I have been in the army of several German states. I have been captain. I came to this country nine years ago.

Q. State whether you ever saw Mr. Crampton?—A. I have not seen Mr. Crampton; I have seen Mr. Matthews.

Q. Will you state what took place between you and Matthews.—A. After having read the proclamation and resolution of the British government for enlisting able-bodied men for the "foreign legion?"

Q. That is the one passed in Parliament?—A. Yes, sir; asking for recruiting able-bodied men for the "foreign legion." I went to Mr. Matthews, and said to him that I could enlist from four hundred

[335] *to five hundred men. Well, I made no arrangements in relation to the enlistment with Mr. Matthew, but I gave him a letter to the British minister of foreign affairs in London, and he told me he would transmit it there.

Q. How long after that did you see Mr. Howe?—A. Six or eight weeks after that.

Q. Where did you first see him?—A. He came to my office on Third street, and asked me to agree with him as to the terms for enlisting men for this legion, and I replied to him that I would come on another day to see him for the arrangement of that matter. I went to him and met there Mr. Hertz.

Q. Where at?—A. Jones's Hotel.

Q. What took place there?—A. After having some conversation with him, I considered it too hazardous and dangerous to go in that concern, and then I retired. I declined to engage.

Q. Did you see him afterward?—A. Yes, sir; but at that time Mr. Howe promised to give me a commission in the "legion."

Q. Was Mr. Hertz present at that time?—A. Mr. Hertz was present at that time.

Q. What else did he say to you?—A. That was all.

Q. What inducement did he hold out to you in order to get you to go into this business?—A. I did not know at that time precisely
[336] that *the laws of the United States forbid the recruiting, and not believing that it was against the law, I would have gone into it, but after having consulted with many of my friends, I came to the resolution to decline.

Q. Did you see him afterward?—A. No, I did not see him after that.

(The original draught of the proclamation which Mr. Strobel testified was the handwriting of Mr. Howe and is given above—see page 326 for this paper—was here shown the witness, and the question was asked him whether he had ever seen it? He answered, I have seen that paper before; I have translated it, and it has been inserted in the Philadelphia Democrat, German Democrat, and Free Press.

Q. Who asked you to translate and insert it?—A. Mr. Hertz.

Q. Did you ever go to Mr. Hertz's office?—A. I have been to it once or twice; it was only to see what was going on.

Q. Did you ever go to collect money for his advertisement?—A. No, sir; I think Mr. Murris, the clerk, did that.

Q. What was going on there when you went there?—A. I have seen there many men, but it was not my business to look at it.

[337] Q. Did you ever ask Hertz, or did he ever tell *you, without being asked, how many men he sent to Halifax?—A. Yes, sir; he told me he sent 100 or so on to Halifax.

Q. Did he say what he sent them for?—A. No.

Q. Did he tell you who took them?—A. It was only in a conversation in the street, and I was not particular.

Q. Did he ever say anything to you in reference to your going there yourself to take the command?—A. Yes, sir; he has told me to go, and I have replied that I would not.

Q. How often did you see Hertz in the presence of Howe?—A. I believe twice.

Q. When was the second time?—A. That was when I declined.

Q. Was Mr. Hertz with Howe when you saw him at your office?—A. No, sir; there was nobody with him.

Q. You only saw him then once at your office and once in the presence of Mr. Hertz, at Jones's Hotel?—A. Yes, sir.

Cross-examination by Mr. REMAK:

Q. Did you not know Hertz before Howe introduced him?—A. Yes, sir; I have spoken to him.

[338] Q. You have stated that at first you were *inclined to go into this matter. Did not you write in your paper articles in favor of the "foreign legation?"—A. No, sir.

Q. Did not your paper contain such articles?—A. I believe not.

Q. Do you not remember that the democratic paper, at whose head you were at the time, had articles against it?—A. I believe it had articles against it.

Q. And was not you yourself in favor of this "foreign league?"—A. No, sir, I was not in favor of it.

Q. Did you not induce Hertz to put in that advertisement?—A. No, sir; he desired me. I translated it.

Q. Did you not go to Mr. Howe, in order to induce him to do something in relation to this translation?—A. Not to my recollection; nothing of the kind.

Mr. Van Dyke here showed witness an advertisement in a German paper, and asked him whether it was a translation of the original paper which was handed him?—A. It is the translation.

Q. You put that in at whose request?—A. For a month, I think.

[339] Q. Who asked you to publish it?—*A. I published it at the request of Mr. Hertz.

Q. (By Mr. CUYLER.) Where did he, Hertz, ask you to translate it?—A. He asked me to translate it, and insert it in our paper.

Q. (By Mr. CUYLER.) At what place did he ask you that?—A. I remember not, but I believe it was in his office.

Mr. CUYLER. You are perfectly sure that Hertz asked you?—A. I am sure Hertz asked me to translate it, and insert it in the Free Press and Philadelphia Democrat.

Mr. CUYLER. Did Hertz personally himself ask you?—A. Yes, sir.

Mr. Van Dyke here gave in evidence the German translation of the original proclamation, as published in the German papers of this city. The original can be found in Strobel's testimony, on page 326.

THOMAS L. BUCKNELL sworn.

Examined by Mr. VAN DYKE:

Question. Will you state to the court and jury all you know of this [340] matter?—Answer. Well, on the 18th of March it was I *heard that the Hon. Joseph Howe, who was either president or director of the railroads in the province, was in New York, and I went on in the 5 o'clock train. I wished to see the procession of the 17th of March, "Saint Patrick's day," and I thought I might see both together. I saw him at half past 11 o'clock on the 16th, at Delmonico's Hotel. I spoke to him of what I had visited New York for, and he told me would see me again, and see what he could do about giving me employment as civil engineer. He said, You can be of use to me in one or two matters while in the city; he gave me some ten sovereigns, I think, to go to bank to get changed into American money, and buy some stationery. Well, I bought the stationery, and got the money changed, and went back and gave the money up, and that was the last I saw of him on that day. On the 17th, I called again, and he asked me to dine with him; I dined with him about half past 4, and showed him my testimonials from different engineers. Two or three gentlemen came in while at dinner, and the conversation stopped about what he could do for me. I do not think I saw him then until Monday, and he asked me, if in the course of my [341] walks *through the city I would call for him at the Metropolitan Hotel, and see if there were any letters for him. I called there,

and got two letters and brought them to him; he had gone out for the evening, and I left them with the book-keeper; I forget now whether I sent them up to his room or left them with the book-keeper; I called next day, I think it was on Tuesday, and he asked me whether I would like to go on to Philadelphia and Washington; I said it was all the same to me where I go, for I have nothing else to do; so he gave me a parcel tied up—I don't know whether it was directed or not—to leave with a man by the name of Hertz, at No. 68 South Third street, Philadelphia; I brought the parcel on, and called next morning at No. 68 South Third street, and asked if there was a man by the name of Hertz there; there was a small-sized man in the room, and he said that Mr. Hertz was in the next room, and he would call him; he called him, and he came out and said, I am Hertz; I then said, the Hon. Joseph Howe directed me to leave this with you, and you will please give me a receipt for it; I then left the parcel. That was all the conversation I had with him on that occasion; I left his office, and went with

[342] *some printed or sealed documents to Washington.

Q. From him?—No, sir; from Howe. I did not get any answer to those; I came back again. The sealed documents were directed to Mr. Crampton. He, Mr. Crampton, asked me when I left New York. I told him about leaving this parcel at Hertz's, and he told me he would recommend me to call back that way and get it again.

Q. You are sure it was him?—A. Yes, sir; I am certain. He told me to call that way again. I called at Hertz's office on my way back, and gave him the receipt I had taken for the papers, and took away the papers I had left at his office. That was the last I saw of Hertz until I saw him at the office.

Q. What papers were they?—They are the printed circulars that came from Halifax; the circulars with the British coat of arms upon it.

Judge KANE. The witness spoke of that as an inclosed parcel.

WITNESS. There was no cover on it; there was only a piece of twine around the parcel, and I could see what they were. I took them

[343] when I came back, and rolled them up myself, *and brought them back to New York. (Circular shown witness with the British coat of arms upon it, a copy of which is already published. See copy on page 15.) That is the circular I saw.

Q. You went back to New York after that?—A. Yes, sir.

Q. Did you see Howe?—A. Yes, sir.

Q. Were you there when Mr. Strobel came?—A. Yes, sir; I saw Mr. Strobel.

Q. Did you give him any money?—A. No, sir; not to Mr. Strobel. At the request of Mr. Howe, I gave $100 to Mr. Hertz.

Q. To Mr. Strobel and him together?—A. Yes, sir.

Q. At the Astor House?—A. No, sir; at Delmonico's.

Q. What did Hertz do with the money?—A. I do not much mind.

Q. Did you see what he did with it?—A. I saw him get a receipt for part of it from Mr. Strobel; I believe it was $80.

Q. Did you see the men that Strobel had there?—A. No, sir.

MAGNUS BENAS affirmed.

Examined by Mr. VAN DYKE:

[344] *Question. Where do you live?—Answer. No. 218 North Fourth street. My business is pocket-book making. I know Hertz.

Q. State what you saw in reference to these enlistments.—A. I got acquainted with Hertz about eight days before he was arrested. I was

down at the wharf as the steamer Sanford left, and I was in his office on the same day and afterward. I got in his employ about a week afterward.

Q. You got in Hertz's office?—A. Yes, sir; in Mr. Hertz's employ.

Q. About eight days before he was arrested?—A. No, sir; after he was arrested; about the 2d of April.

Q. Still in the same office?—A. Yes, sir.

Q. Well, then, what did he engage you for?—A. Well, for transacting his business. It was a commission office.

Q. Did you write that card to Halifax at his request?—A. I wrote that card on my own account. It was for an acquaintance of mine, and I wrote it on my own account.

[345] Q. Do you know anything about the office *for recruiting, and Mr. Hertz's connection with it?—A. Well, I heard something, but I did not know anything before.

Q. Did he tell you anything about the office kept by the Baron Von Schwatzenhorn? State what you know about Hertz engaging Von Schwatzenhorn.—A. There was a conversation between the Baron Von Schwatzenhorn and Hertz.

By Mr. CUYLER. In your presence?—A. Yes, sir; they met at 68 South Third street, and agreed that Von Schwatzenhorn should see to getting the men, and Hertz procured the vessels to bring them to Halifax, and accordingly Hertz sent me at different times to the office of the English consul to inquire about vessels loading for Halifax, merchant-vessels, mostly schooners.

Q. That was for the men whom Baron Von Schwatzenhorn was getting?—A. Yes, sir. I was about four or five times in the office, and about five vessels; two of the vessels I recollect the names of; they were the Gold Hunter and Boneita.

Q. Were men sent in these vessels?—A. Yes, sir; they were

[346] sailing-vessels, direct *for Halifax.

Q. Were they English vessels?—A. Yes, sir, I guess so; I do not know sure.

Q. Did you see any of the vessels?—A. Yes, sir, I saw them all.

Q. Did you see the names of any of them?—A. Yes, sir, I told you.

Q. Where did they hail from?—A. I do not know.

Q. How many men did you ever see off in a vessel?—A. I saw them off, once four men and another time six, but never more than six were in one vessel.

Q. What was the character of these vessels?—A. They were schooners.

Q. Was it at the request of Hertz that you went to the British consul's to know when merchant-vessels were going to sail, for the purpose of sending the men Baron Von Schwatzenhorn had engaged?—A. Yes, sir.

Q. Where did the Baron Von Schwatzenhorn keep his office?—A. He lived at the corner of Fourth and Brown.

[347] Q. This was after the arrest of Hertz?—*A. Yes, sir, it was.

Q. Do you know at whose request the baron commenced to engage men?—A. I do not know.

Q. (Card shown witness, a translation of which is published at bottom of page 333, *ante*.) Look at the bottom of that card, and say if you have not stated at whose request you wrote it.—A. I did it of my own accord, and wrote that down to let Mr. Strobel know that I was in the employ of Hertz.

Q. Is it not written at the request of Mr. Hertz, at the bottom?—A. I wrote it so, but it was on my own account.

Q. Do you know Schuminski?—A. Yes, sir, I saw him. He was not engaged at the request of Mr. Hertz, but of the Baron Von Schwatzenhorn. He was with the baron.

Q. They acted together?—A. Yes, sir.

Q. Do you know how many men the baron got altogether?—A. No, sir, I do not know; I guess about twenty or twenty-six; I cannot tell for sure.

[348] Q. Did Hertz ever tell you how many *men he sent altogether?—A. No, sir.

Cross-examined by Mr. REMAK:

Q. Mr. Baron Von Schwatzenhorn was not requested, then, by Mr. Hertz to send men?—A. No, sir.

Q. Do you know Winsor and other gentlemen who procured the vessels?—A. I do not know anything about it.

Q. Was Mr. Hertz exactly in the position of Winsor and other gentlemen who had vessels at their disposal?—A. I do not know; Mr. Hertz sent me to the English consul to inquire about vessels loading for Halifax; that is all I know. I know they were for sending the men to Halifax that the Baron Von Schwatzenhorn procured.

Q. Did you not know that the baron was indicted in this court?—A. Yes, sir, I knew that.

By Mr. VAN DYKE:

Q. Do you know where he is now?—A. In Halifax.

Q. What is he doing?—A. I do not know.

CHARLES BENGTHAL sworn.

This witness was a German, who could not speak English,

[349] *and Mr. Theodore H. Oehlschlager was sworn as interpreter.

Examined by Mr. VAN DYKE:

Question. Where are you from?—Answer. From Vienna.

Q. In what service have you been?—A. Military.

Q. In what military service?—A. The Austrian.

Q. What official position did you hold?—A. I was a major and lieutenant-colonel in the engineer service.

Q. When did you come to this country?—A. The 28th of September, 1848.

Q. Where had you been located with your command before you came here?—A. In Hungary.

Q. At what place?—A. At Komorn.

Q. Did you, at any time, see Mr. Crampton in reference to recruiting for the British government?—A. Yes, sir.

Q. State when you first saw him, and how you happened to go to see him?—A. I was engaged as superintendent on the Panama

[350] Railroad, but being sick, *returned to the United States and went to see Mr. Marcy and Mr. Cushing and other gentlemen, and when in Washington became acquainted with Captain Strobel. I knew Mr. Strobel previous to this, five years before. Mr. Strobel informed me that Mr. Crampton was seeking officers for this business. In the end of February I went out with Mr. Strobel to see Mr. Crampton; I went to Mr. Crampton's with Mr. Strobel; he was not at home; he was at a dinner party at Mr. Marcy's; I left my card there, and went to

Baltimore to my family. Four or five days afterward I received a telegraphic dispatch from Mr. Crampton, requesting me to return to Washington; the next day I did so. I went over there, and was with Mr. Crampton, and held a conversation of over an hour with him, relative to this recruiting business. He made me a proposition, requesting me to enter the regiment as colonel. I observed to him, that I would not enter the service unless there was a perfect security as to my getting a commission, as I did not wish again to enter the service of a despotic power.

Q. What do you mean by "perfect security?"—A. I mean a commission from the Queen, as no one else was able to give a commission.

[351] *Q. What else occurred?—A. Then I came to Philadelphia in the beginning of March, and saw Strobel here; I also made the acquaintance of Mr. Hertz. About the 10th or 12th of March, Mr. Howe came here and visited me.

Q. Did Mr. Howe call on you of his own accord?—A. He looked for me and visited me of his own accord, having heard from Mr. Rumberg that I was here.

Q. State the conversation between Mr. Howe and you.—A. He made the same proposition. He stated that he had officers here, in Baltimore, in New York, in Chicago, and in different parts of the country. He then told me that he would obtain for me a commission; that he had authority from Mr. Crampton so to do. I refused the offer, having other employment here at the time. Afterward, Mr. Howe visited me with two or three other gentlemen, and invited me to Jones's Hotel. I went to him and dined with him and these other gentlemen. I informed him at dinner of my opinion in relation to this recruiting business; that it had been forbidden in the United States. He

[352] *showed me two placards, one in German and the other in English, and also a journey-card and ticket, and told me that he did not think he could be laid hold of in the matter.

Mr. REMAK. He said that he felt certain that nothing could be done to him?—A. That nothing could be done against him in the United States. He also requested me, if I came to New York, to visit him at Delmonico's Hotel. I went there, but did not meddle any further in the matter, nor go to see him.

Q. Did you, at any time, see Mr. Hertz, or have any conversation with him?—A. I saw Mr. Hertz very often when I came to see Mr. Strobel.

Q. Where at?—A. Mr. Hertz's office in Third street.

Q. What was he doing?—A. I do not know; he was writing; people came there for him; they came to see him.

Q. Did Hertz have any conversation with you?—A. I said nothing to him; I simply saluted him.

Q. Had he any conversation with you in reference to recruiting men?—A. Yes, sir; I think he spoke of it.

[353] *Q. What did he say?—A. He said that he sent people to Halifax, but not for military service; that he had a commission to do so.

Q. What did he send them for?—A. I had my opinions as to why they were sent there, but I did not tell him, nor did he tell me.

WILLIAM BUDD sworn.

Examined by Mr. VAN DYKE:

Question.—Are you acquainted with Mr. Hertz?—Answer. Since the 13th of March.

Q. Where were you made acquainted with him?—A. I was introduced to him as the agent in this city for the recruiting for the foreign legion.

Q. State what took place.

Judge KANE. What was the character of the introduction?

WITNESS. He was introduced to me as the agent, by my friend, Mr. Strobel. We went down there one morning, and after some preliminary conversation between Hertz and Strobel, he introduced me to him. Strobel remained in the outside room, and he asked me whether I

[354] would go to Halifax; he said that he was agent *of the foreign legion, and asked me whether I had called to receive information about it. I told him I had. He then told me that commissions were to be issued for men, who would go on there, and he supposed that I would get one. I then gave him my address, and he requested me to call again, and he would let me know when the first expedition started; to step in every day and see him, and see what was going on. I did so. He engaged me to go on there, for the purpose of obtaining a commission.

Q. State the conversation fully, that occurred between him and you, in reference to your going there.—A. Well, we had a great many conversations; almost every day we talked about it.

Q. When did you first agree with him to go to Halifax for the purpose of obtaining a commission? State the conversation that then took place.—A. I did not agree on the first interview; I told him I would think about it.

Q. What did he say at that interview?—A. He promised me a commission.

Q. Did he ask you to go with that view?—A. Yes, sir, he did.

[355] Q. And you told him you would think *about it?—A. Yes, sir.

Q. What next took place?—A. After two or three days he asked me if I had made up my mind; I told him yes, I would go to Halifax and see what took place when I got there. He then intended to send me with Captain Strobel, but I concluded not to go; there was not men enough going, and I preferred to hear from him and hear how he got on when he got there. It was on a Sunday when he started, and I did not go with him.

Q. What did you do from the Sunday up to the time you started?—A. On Monday Hertz was in New York.

Q. Who had charge of the office while he was gone to New York?—A. Bosschart and myself were there, and we took several persons down who came in there.

Q. Did you do that at the request of Hertz?—A. We did at his request.

Q. Who was Bosschart acting for?—A. I understood he was acting for Hertz.

Q. Did you raise any men in that time?—A. About twenty-five or thirty.

[356] Q. What did you do with them?—*A. The day before we started they all came there, and we gave them tickets and told them to be down at the New York boat next morning. I went down there after I received instructions from Hertz where to go to in New York.

Q. What instructions did you receive from him?—A. He told me to go to Delmonico's Hotel, and call and see Bucknell. We started, and did not get any further than the navy-yard when we were arrested.

Q. You took the men?—A. I did not take them; they were down on the boat.

Q. They were in your command?—A. I had no real command. I was considered as leader of the party.

Q. By arrangement with Hertz?—A. Yes, sir.

Q. How many had you?—A. About thirty when we started.

[357] I only saw twelve when the arrest was made. I think *there was thirty. It was on a Wednesday. I am not sure whether it was on Wednesday following the Sunday that Strobel went on with men.

Q. Did you see the men go on the boat?—A. I did, sir, and told several of them to hurry up or they would lose their passage. I took the tickets from them after we had started down the river.

Q. What boat was you on board?—A. The Delaware or Sandford—one of the New York line. The Delaware, I think.

Q. (Tickets shown witness same as copied on page 311.) State whether those are the tickets used?—A. I do not know; tickets like those the men had, and after they got on the boat the captain told me to muster them and take them up.

Q. They got those tickets from Mr. Hertz and yourself, you have said. Where did you get the tickets you gave them?—A. From Mr. Hertz, and when the tickets were taken from them I gave them other tickets, which the clerk of the boat gave me.

Q. Who settled with the boat for those tickets?—A. I do not know.

Q. You started in the boat and were going down the river?—A. Yes, sir.

Q. What happened then?—A. When I mustered them and

[358] found there was *so few, I was looking for the rest when Mr. Jenkins came up to me and told me he would like to see me, that he had a warrant for me, and the marshal would be up alongside in a steamboat in a few minutes; I told him, "Very well;" they searched me for papers and brought me up to the office; I do not recollect the names of any of the company.

Q. Had you a muster-roll?—A. I had.

Q. Where is it?—A. I rather think I tore it up when I was arrested.

Q. (Book containing the names of the men who enlisted at Hertz's office shown.) Do you know that?—A. Yes, sir.

Q. What is it?—A. I cannot say exactly whether it is part of Strobel's company or mine; I rather think it is mine; several of the men who had enlisted to go with Strobel's company did not go with him but went with me, and this list is part of Strobel's and part of mine. I think; I do not know whose writing it is in; Mr. Hertz gave me the list, and I suppose he wrote it; I have seen the book in Mr. Hertz's office.

Q. (Paper shown witness containing a list of names.) Do you know if that was the list of your company?—A. I think it was, to best of my knowledge, and I think I made those marks on it. I had no list

[359] *besides this.

Q. (Another paper shown witness similar to the first.) Is that a copy of this?—A. Yes, sir, I expect so.

Mr. Van Dyke here offered in evidence the list of names which the witness identified as containing the names of the members of this company, from which some of the bills had been drawn. The list is read in evidence.

Q. Do you recollect the names of James Johnson or Peter Mughn?—A. I do not.

Q. Do you recollect Mr. Bucknell's coming into the office with the handbills?—A. Yes, sir.

Q. Do you know whether Mr. Hertz took them, and what he did with them?—(Bill containing British coat of arms shown witness, same as copied on page ante —.) Is that the bill?—A. Yes, sir.

Q. What did Mr. Hertz do with them?—A. Several were stuck up around the office, and on the outside, and several were sent to be distributed. I understood they were sent around to the lager-beer saloons.

Q. What became of the bills?—A. Mr. Bucknell took some away, and the rest were burned.

[360] Q. How did that happen?—*A. I went in one morning and saw some excitement; they were shoving the papers in the stove, and they told me that Mr. Bucknell had taken the rest of them away with him.

Q. Did you ever see Mr. Perkins in the office?—A. No, sir.

Q. What did Mr. Hertz tell you was to be the destination of the men you took?—A. Halifax.

Q. What were they to do there?—A. To enlist in the foreign legion if they were found physically competent.

Q. Was there a physician at the office for the purpose of examining men that came there?—A. No, sir.

Q. Do you know what he was paid for getting these men?—A. I do not know the exact agreement.

Q. Did you ever see any telegraphing or letters written by Mr. Hertz?—A. Yes, sir.

Q. State what the telegraph contained?—A. I saw him write a telegraph dispatch to Bucknell; he told him to wait.

Q. Did you see any letters written by Hertz?—A. Yes, sir.

Q. State what it contained?

(Mr. Cuyler objected.)

[361] *Q. To whom was the letter addressed?—A. To Mr. Bucknell.

Mr. BUCKNELL was here recalled.

Q. Have you got that letter written by Mr. Hertz?—A. I never remember his sending one.

Q. Did you ever receive the telegraphic dispatch he sent you?—A. Not that I can remember.

Mr. BUDD'S examination continued.

Q. State what was in that letter?

(Mr. Cuyler objected.)

Q. Where did you last see the letter?—A. On Mr. Hertz's desk.

Q. Who was at the desk at that time?—A. Mr. Hertz himself; he was writing at the time.

Q. Have you seen it since?—A. No, sir.

Q. Do you know whether it was ever put in the post-office?—A. No, sir.

By Mr. CUYLER: Have you any knowledge of it except that it was a simple sheet of paper on which he writing?—A. Yes, sir, he informed me of the nature of it, and read part of it to me.

Q. Did he give that letter to you after it was written?—A. No, sir.

Q. Have you no knowledge of what became of it?—A. No, sir.

[362] Q. Go on and state to the best of your knowledge *and recollection what it was that Mr. Hertz wrote on that sheet of paper.—A. Mr. Hertz was writing, and I was waiting in the outer office. He asked me how I spelt my name, and told me that he was writing about me, and stating that I was coming on next day. I then went around to where he was writing, and he again asked me how I spelt my name, and I looked

over his shoulder and saw he was writing to the agent in New York, that I was coming on with men, and he hoped, he wrote, that he would keep his word, and send him on money at the rate of $4 for superior brands, and $2 for inferior brands.

Q. What did he mean by superior and inferior brands; did he give you to understand?—A. No, sir, he did not. I understood this perfectly.

Q. Did you see him writing a telegraphic dispatch?—A. I saw him write a telegraph asking whether I should come on next day or not; I forget who took it to the office.

Q. Was there anything in it besides that?—A. He did not use my name; he asked whether he should send twenty or thirty parcels next day.

Q. Do you know whether he got an answer?—A. Yes, sir.

Q. What was the answer?—A. "Yes." It was signed "B." I think it was "Yes; all right." It was in the affirmative. He then

[363] told *me to get ready to go next morning.

Q. Did he say anything to you in reference to getting directions in New York as to what to do?—A. He told me I would get directions for money or assistance from the agent at Delmonico's Hotel to proceed on to Halifax.

Q. Did he mention the name of the person there?—A. He asked me whether I would know Bucknell again, and I told him yes.

Q. Did Hertz give you any money before you left?—A. No, sir.

Q. Have you had any conversation with him after your arrest?—A. O, yes.

Q. What was it?—A. He said so much I cannot state it.

Q. State what he said in reference to this recruiting business after you were arrested?—A. After they had arrested me, the marshal went on shore and arrested Hertz at his office, and t' ey kept us in the Delaware a couple of hours, until they had preparations made for our reception. The deputy-marshal kept the boat out, and when we came up to the office I found Mr. Hertz here. He said, "all right; I will bail you out," and I did not think anything more about it until I was committed.

[364] Q. Did he say anything about remaining quiet?—*A. Not then; not until the latter part, when I had some difficulty in procuring bail.

Q. What did he say to you then?—A. He said keep quiet; I will have you out. He afterward said something about the matter; it was to keep my mouth shut; it would be all right; I would be well paid for it.

Cross-examined by Mr. CUYLER:

Q. When was it you were arrested?—A. I cannot exactly remember the day, but it is very well known; I think it was in the latter part of March.

Q. Was there any previous communication between yourself and the United States officers before the arrest?—A. None whatever.

Q. This arrest was not, then, in consequence of any conversation between yourself and the authorities, directly or indirectly?—A. No, sir.

Q. Your arrest was a complete surprise to yourself?—A. Yes, sir; to me. I was totally unprepared for it.

Q. Where did the conversation take place when he told you to keep your mouth shut?—A. Once down in the prison and once in the commissioner's office.

Q. (By Mr. REMAK.) In what country were you born?—A. I decline answering that question, as it implicates myself. I have been advised to decline answering it.

[365] *Q. (By Mr. VAN DYKE.) Did you ever state under oath where you were born?—A. Never.

Q. (By Mr. CUYLER.) Do I understand you to say distinctly that to answer the question, where you were born, would involve you in a criminal prosecution?—A. No, sir; but to answer whether I am a citizen or not, would involve me in a prosecution.

Q. (By Mr. REMAK.) Have you not been arrested and held to bail before the United States commissioner, Heazlitt, on the charge of having retained and hired men for the foreign service?—A. I believe so; that is the charge on which I was arrested and held to bail for a further hearing.

Q. Was you not on the 18th of March, 1855, a defendant from Commissioner Heazlitt; that was the day you were arrested?—A. Yes, sir.

Q. Did you not turn State's evidence on the 28th of March against Hertz?—A. I believe that was the first day I gave evidence.

Q. Did you not say before the United States commissioner that Hertz had promised you money in case you would keep your mouth shut?—A. I did so at that time.

Q. Did you not receive that money because you were in very destitute circumstances?—A. No, sir; I did not.

[366] Q. Had you any money in your pocket at the time *you were in prison?—A. I had.

Q. How much?—A. I had sufficient.

Q. You stated in your examination-in-chief that Strobel introduced you to Hertz, as an agent of the English government; why did you not say so before the United States commissioner?—A. I said so; I do not know whether I used the exact words, but to the same sense.

Q. It is here in the published report of the proceedings, that you said: "I was introduced to Hertz about the 15th of March, by Mr. Strobel; was introduced to Hertz as the person who would give me all the information about organizing the foreign legion in Nova Scotia." Did you not say that?—A. Yes, sir.

Q. You said to-day that you was introduced to him as the agent of the English government.—A. For that purpose.

Q. Did you, or did you not, state before the United States commissioner that Hertz was introduced to you as the agent for the English government? You say now that he was introduced to you as the agent of the English government.—A. He was introduced to me as agent appointed in this city by the government for whom the foreign legion was to be raised.

Q. You said that he was introduced to you there as the person who gave the information?—A. In that capacity.

[367] Q. You did not employ the word agent?—A. I do *not recollect it.

Q. Did you not say before the United States commissioner that it was left optional to any person coming into the office whether he would go to Halifax or not, or what he would do there?—A. I said that of course it was left optional with the recruits to go to Halifax, but after they got there force was to be used to induce them to enlist.

Q. Did you then state to the United States commissioner that Hertz was the agent to enlist those persons for foreign service?—A. I did not say so.

Q. Did you not state to the United States commissioner that Hertz sent men to Halifax, and it was immaterial to him what they were going to do there?—A. I do recollect that Hertz sent them to Halifax for the purpose of being enlisted in the foreign legion; of course he had nothing to do with them after they got there.

Q. Do you remember the 31st of March, when Richard Vaux was your counsel, and when Benjamin Rush made that great speech, was not you a defendant at the beginning of that period?—A. I do not know.

Mr. VAN DYKE. There is no dispute about it. He was a defendant, and was discharged by the commissioner by my direction.

Mr. REMAK. It is for the jury to know, I desire to know, whether or not the witness, on the 31st of March, was a defendant, and
[368] had made up his mind to turn *State's evidence at the time?

Mr. VAN DYKE. I discharged him for the purpose of using him as a witness.

Mr. REMAK. I desire the answer of the witness.

WITNESS. I think I made up my mind; I think so, I am not positive.

Q. Did not Mr. Hertz say to you that he had no power whatever to give commissions?—A. He said he had not power to issue commissions here.

Q. He said he had no power to give any commissions?—A. Here.

Q. Do you believe he had any power to do so?—A. I really do not know.

Q. Was Mr. Strobel present when you conversed with Mr. Hertz?—A. On some occasions. On the first occasion he was present during only the first part of the conversation.

Q. Who else was present?—A. No person.

Q. Did not you desire to see Mr. Hertz yourself?—A. After I was informed that he was the general agent of the English government, I did.

Q. Had you a desire to enlist in foreign service?—A. No, sir; I was not going to enlist; I was to receive a commission, not to enlist.

Q. And you say Hertz did not promise you any commission at
[369] all?—*A. I did not say so. I said he promised me that the fact of my going on there would insure me a commission when I got there.

Q. He had not power to give one?—A. Not here.

Q. From whom did you receive tickets?—A. From Mr. Hertz.

Q. What were the tickets for?—A. To give to those men I was going to take on, to get their passage. Nothing else was given to the men.

Q. You state, I think, that able-bodied men could be enlisted in Halifax, if they proved physically competent?—A. Yes, sir.

Q. Did you hear Mr. Hertz say at any time that "physically competent" men would be received at Halifax?—A. No, sir; not these exact words; he has said if they were sound, and has asked me if they were all right.

Q. Why did you not say that before the United States commissioner?—A. I suppose I was not asked; I do not know the reason I did not.

Q. Did not your examination before the United States commissioner last for some time; for two hours?—A. I do not know; it lasted for some time; I could not exactly say what time.

Q. Was not you asked at the time all you know about it?—A. I was, but I may have forgotten some particulars; I had heard so much
[370] that I could not remember *exactly all.

Q. How comes it that you remember it now, and not then?—

A. There is some conversation which I related then that I cannot remember now.

Q. Who have you had conversations with in the mean time about this proceeding, that is, from the 31st of March to this 23d of September?—A. With a great many persons with whom I am acquainted, I merely talked the matter over.

Q. Was not you very partial to carrying on the war in Europe against Russia, and for that reason you wanted a commission?—A. I do not know, sir; I never remember expressing my sentiments; I wanted to go there to have a fight, and I did not care which side I went on.

Q. Have you not changed since that time in regard to the war in Europe?—A. No, sir; not in the least.

Q. You are now on the Russian side?—A. No, sir; I am not now on any side.

Mr. Van Dyke here stated, that as the attorney for the defence (Mr. Remak) had seen fit, in order to impeach the testimony of Mr. Budd, to read a part of his testimony before the United States commissioner, in justice to Mr. Budd he deemed it proper, in corroboration of the [371] testimony of the witness, to read the whole of the *testimony before the commissioner, that the jury might see that there is no discrepancy in the two statements. (Mr. Budd's testimony before United States Commissioner Heazlitt is here read by Mr. V.)

JOHN JACOB BOSSCHART sworn.

Examined by Mr. VAN DYKE:

Question. Do you know Mr. Hertz?—Answer. Yes, sir.

Q. How long have you been acquainted with him?—A. I guess I got acquainted with him last March.

Q. Where did you first get acquainted with him?—A. I do not know exactly whether I got acquainted with him at my own house or first at his office, No. 68 South Third street. I think it was at my house. I was in the habit of attending his office during the month of March.

Q. State all that took place between you and him, and between him and other persons, in relation to enlisting for the foreign legion.—A. I was first made acquainted with the business by Mr. Leob. He told me that Mr. Hertz had entered into the business of recruiting for the British foreign legion. Some time afterwards Dr. Biell, who was boarding with me at the time, told me about it, and I soon after saw an advertisement in the German Democrat, Pennsylvanian, and Ledger, that they wanted men for the British foreign legion; that every one [372] who chose to go to No. 68 South Third street would *learn the particulars. Dr. Biell and Aschenfeld went down there, and I went too, to see what was going on; I saw the officers and men going there, and spoke to Mr. Hertz about this foreign legion, and about their pay and commissions. Some of them signed their names in the book, and some of them were taken down by Hertz himself.

Q. What was the character of the conversation which took place between Mr. Hertz and the men when they came up there?—A. The men came in and generally asked if that was the recruiting office, or office to enlist men for the foreign legion; the reply generally was that that was no recruiting office, and that they could not be enlisted there, but if they choose to go to Halifax, they might be enlisted there; then he showed them the handbills which stated that $30 bounty was given,

and $8 a month to the men; he said that it was in his power to give them a commission.

Q. (The handbill shown witness, containing British coat of arms, already published. See page *ante* —.) Is this the kind of handbill which he showed them?—A. Yes, sir.

Q. What did the men say they wanted to go to Halifax for?—A. They wanted to go to Halifax to serve in the foreign legion, that is, the men who came to the office.

[373] *Q. Did he engage them to go there for that purpose?—A. As I understood, he engaged them to go for that purpose.

Q. To enlist when they got there?—A. Yes, sir.

Q. And they told him that that was their intention when they got there?—A. Yes, sir, they told him that.

Q. How long were you with him in that office?—A. I was there every day from the beginning of the business until we were arrested.

Q. Do you recollect any physician who examined the men?—A. Well, I recollect that Dr. Biell examined some of them.

Q. Do you know what Mr. Hertz was to get for sending on these men?—A. No, sir.

Q. Do you know who employed Mr. Hertz to do this business?—A. I was told Mr. Howe employed him.

Q. Who told you?—A. I do not recollect who told me.

Q. Do you recollect Mr. Hertz ever saying anything about it?—A. I heard Hertz talk frequently about Howe, but cannot recollect distinctly that he said that Howe employed him.

[374] *Q. Did Hertz, in speaking of the manner in which he was employed to conduct this business, speak of Howe as being connected with his being employed?—A. Yes, sir.

Q. Did Mr. Hertz ever say anything to you about Mr. Crampton having employed him?—A. He told me he had seen Mr. Crampton on the subject,

Q. What did he say had taken place between him and Mr. Crampton?—A. He did not say what had taken place betwen him and Mr. Crampton, not that I recollect.

Q. You recollect the departure of Captain Strobel and his company?—A. Yes, sir.

Q. Were you at the wharf at the time?—A. Yes, sir.

Q. Was Hertz there?—A. Yes, sir.

Q. To assist in getting them off?—A. Yes, sir.

Q. Did he engage that company to go to Halifax?—A. Yes, sir.

Q. For what purpose?—A. For the purpose of enlisting in the foreign legion, as I understood.

Q. Do you know whether he went to New York to make arrangements for sending that company from New York to Boston?—A. That company started from here on Sunday morning, at 10 o'clock, and Mr. Hertz went to New York on Sunday night, in the half-past

[375] 1 o'clock *train, to make arrangements to see that the men got off from New York; he returned to this city on Monday night or Tuesday morning. I saw him on Tuesday morning again in the office.

Q. While he was away you had charge of the office?—A. I had charge of the office.

Q. Were you directed to conduct the business for him while he was away?—A. Yes, sir.

Q. And those men who were enlisted during the absence of Hertz on Monday, were engaged by you at the direction of Hertz?—A. Yes, sir; I took the names on a piece of paper as directed, and told the men Hertz

would be back on Tuesday, and find a vessel to bring them on to Halifax.

Q. Why did you not take the names in the book during his absence?—A. I guess I was directed by Mr. Hertz to take them down on the paper.

Q. (Paper shown witness.) Is that in your writing?—A. I could not say whose writing it is, some of it is written by [illegible], two of the names are written by me, Robert Korn and Peter Sable; it is the list which was kept in the office; that list contained the names of those who engaged to go.

[376] Q. (Another paper shown.) Is that another list of the names kept in the office?—*A. Yes, sir; there is none of my writing on that.

Q. (Book containing the names of those who enlisted, which has already been published, shown.) Look at that book and say whether you see any of Hertz's writing in it?—The names on the first page, I think, are all written by the men; on the second page also; and on the third page some of them are written by Hertz.

Q. (List of officers in the back of the book shown witness.) What is that?—A. That is a list of the officers. It is in Mr. Hertz's writing. It contains the names of Strobel, Esson, Shumann, Biel, Lisepenny, Budd, Aschenfeld, Riter, and Anglere. I know those men engaged to go as officers; some of them as non-commissioned officers, and some of them as commissioned officers.

Q. Do you know what pay Mr. Hertz got for this?—A. No, sir.

Q. (Tickets shown.) Did you see many of this kind of tickets about the office?—A. Yes, sir, there was a great many of those tickets.

Q. Did the men who went into Strobel's company get any tickets?—A. I guess so. I am not certain.

Q. (Another book shown.) Do you know that book?—A. I saw that book once there.

Q. Whose writing is that in it?—A. I guess it is the writing of a man in the employ of Mr. Hertz, Mr. Holm. I do not know exactly, but I think so.

(Book read in evidence, from which it appeared that Hertz was debited with $750 and credited by cash with $300, and then charged with 758 tickets.)

Q. Do you know who he got that cash from?—A. No, sir.

[377] Q. (Some handbills were shown witness.) How many of those handbills did you see about there?—*A. I could not tell how many. I saw a package of them. Mr. Bucknell brought them.

Q. Were any of them posted about?—A. Yes, sir.

Q. By whom?—A. I cannot tell.

Q. Who directed it to be done?—A. Mr. Hertz.

Q. Do you know who paid the German Democrat for the advertisement of this call?—A. Mr. Hertz did.

Q. Where did he pay?—A. In his office.

Q. Who called for it?—A. The clerk of the Democrat, Mr. Morris.

Q. Did you see him pay?—A. I saw him pay.

Q. You were arrested at the office?—A. Yes, sir.

Q. With Mr. Hertz, on the morning that the steamer started?—A. Yes, sir.

Q. Was it before or after the men were arrested?—A. On the very same day.

Q. It might have been earlier in the day or later in the day?—A. It was after the men had started. Mr. Budd was put in command of them.

Q. Do you recollect the list of the names of those who went with Mr.

Budd?—A. I think that is the last list shown me; but I am not sure of it.

Q. Do you know whether all those who went with Budd were engaged by Hertz to go with him?—A. They were engaged by Hertz to go to Halifax.

[378] *The witness was here questioned by Judge Kane as to the larger book which he had identified as containing a list of the names of persons enlisted.

Q. Was anything written in this book on the page preceding that containing the name?—A. No, sir; it is a list of officers, with their rank.

Q. It has been cut out?—A. Yes, sir; the list of officers is cut out.

Q. It was the list of officers with their rank?—A. Yes, sir; they put their names down, and the rank they were to hold there was put down by Hertz. I mean military rank.

Q. That was all on the page cut out?—A. Yes, sir; there are two leaves cut out; one was for the commissioned officers, and one for the non-commissioned officers. I recollect there is a list of officers written in the back of the book after they were cut out; and that was just a memorandum.

Dr. PETER JOSEPH REUSS sworn.

Examined by Mr. VAN DYKE.

Q. You are a physician?—A. Yes, sir.

Q. What country do you belong to?—A. Hesse; I have been in this country this 26th of September is four years.

[379] *Q. Will you state whether you came to Philadelphia in March or April last, and for what purpose?—A. I came to Philadelphia for the purpose of going to Halifax; I was to go to New York and thence to Montreal; I came here induced by a proclamation in the Philadelphia German Democrat; I went through here to New York, and from New York to Halifax.

Q. Did you stop at Hertz's here?—A. No, sir.

Q. Why not?

(Mr. Remak objected.)

Q. Had Hertz been arrested at the time you arrived here?—A. I do not know that, because I did not stop in Philadelphia; I went to New York and Montreal, and then to Boston, and from Boston to Halifax in the Africa.

Q. Is that the steamer?—A. No, sir; the bark Africa.

Q. When you got to Halifax, where did you go, and who did you see?—A. I went to the Provincial Building, and spoke with Mr. Wilkins and Mr. Bruce McDonald.

Mr. REMAK. Be good enough to bring this home to Hertz.

Q. (By Mr. VAN DYKE.) Have you at any time had any conversation with Hertz, before or after that?—A. No, sir.

[380] *Q. When you arrived in Halifax, state what you did.—A. I went to the Provincial Building and met Wilkins, the first secretary of Nova Scotia, and the same day afterward I spoke with Sir Gaspard Le Marchant, the governor of Nova Scotia. I sent some days before a letter, in the French language, to Sir Gaspard Le Marchant, and told him what I came to Halifax for—that I was induced by his proclamation. I had sent a man before to No. 68 South Third street, Philadelphia, to see what the business was, because it was in the proclamation that physicians and surgeons would be engaged with good pay; and this man came back and told me that the whole business had been

stopped by the United States attorney, and that he had spoken with one man on the subject, but he did not tell me his name, and he told him that the business was all right, to go to Halifax, and I would be engaged as physician for the regiment. I wrote the letter, but did not receive any answer, because the business was stopped. In Halifax, the governor told me that I could not be engaged unless I raised men. I refused that, because I told him I did not come for that business; I came to be engaged as doctor and not as recruiting-officer. Mr. Wilkins called on me some time afterward, and told me that if I raised
[381] men in the United States, I *should be engaged, but not if I refused; and then I was obliged to go, because the governor told me I could not be engaged without this; then I was employed as officer of recruiting, and went with Captain Strobel to the States, and was sent by him to Detroit, in Michigan.

Q. Did you hear any conversation at any time between certain gentlemen when Mr. Crampton was present?—A. Yes, sir; in Halifax, on the 15th of May, we met Mr. Crampton.

Q. Who told you to meet him?—A. Strobel called on me, on the 14th of May, and told me to come to the Provincial Building, Halifax, and meet Mr. Crampton and Sir Gaspard Le Marchant, and I went and found there Lieutenant Preston, and Strobel, and some other officers.

Q. What took place in that conversation?—A. That conversation was that we should go to the United States and raise troops.

Q. Who told you to do that?—A. Mr. Crampton and Sir Gaspard Le Marchant, with Mr. Strobel.

Q. They said that to Strobel?—A. Yes, sir; and that he would go to Canada and the States, and arrange this so that we could raise troops without danger.

[382] Q. What plan did they give you to raise *these troops without danger?—A. That is what they spoke to Captain Strobel. I did not hear every word, but heard them tell him that we should go to the States, and arrange the business so that we cannot be caught by the United States officers.

Q. They told Captain Strobel that he should go to the States, and arrange business so as not to be caught by the United States officers?—A. Yes, sir.

Q. Who told Strobel that?—A. Mr. Crampton; he made the arrangements with Strobel, and spoke that to Sir Gaspard Le Marchant.

Q. What plan did Mr. Crampton say you were to adopt in the States to prevent being caught by the officers?—A. That we should do it very still; not to work too openly, and that we should engage runners and any other men who would bring men to the depots, and from these depots we were to send them to Canada West, to the barracks.

Q. What kind of runners did he speak of your engaging?—A. Boarding-house runners, emigration runners, commission-house runners, and every kind of runners, I believe.

Q. Did he say anything in reference to what you were to say to these men?—A. That every man was to receive $30, and $5 was to be
[383] taken for payment of expense; that is what I learned *from Strobel afterward, that is, what was promised the men.

Q. Was anything said about that in conversation with Mr. Crampton?—A. No, sir, not to me; it was spoken to Mr. Strobel.

Q. He told Strobel they were to have $30?—A. Yes, sir, and $8 a month pay, cash. The bounty was given for enlisting. Each runner should receive $4 a head for enlistments.

Q. That was the pay of the runner?—A. Yes, sir; if the man was capable of being enlisted, not if the man was refused.

Q. Were they to get any pay for men refused?—A. No, sir.

Q. Then it was only for the men who arrived at the barracks and got enlisted that they were paid $4 a head?—A. Yes, sir.

Q. Did you receive any money at that time for this purpose?—A. On the 14th of May I received from Captain Strobel $220.

Q. Where did he get it from?—A. Out of the Provincial Building. Mr. Bruce McDonald gave him the money in my presence. He is the clerk of Mr. Wilkins, or second secretary, I do not know which it is.

Q. What were you to do with that $220?—A. To run to the United States for these men; that was the pay for half a month for myself and one sergeant.

[384] *Q. Did you see Mr. Crampton after that?—A. We left the next day, the 19th of May, and we came to Windsor, in Nova Scotia, and when we got there we took the steamer to Saint John's.

Q. Where did you next meet Mr. Crampton?—A. I saw him in Windsor, and saw him on the ship to Saint John's, and next day at Portland. At Windsor we took the Creole for Saint John's, and I saw Mr. Crampton in the presence of Lieutenant Preston and another English officer; I do not know his name. He came on board to us there at Saint John's. He talked very often to Captain Strobel, and I went in the same ship with him to Portland.

Q. Did you see him afterward in Portland?—A. No, sir; know he left the steamer at Portland.

Q. Wherefore?—A. To go to Montreal.

Q. Who went with him?—A. I believe Captain Strobel. I took the cars for Boston, and from Boston to Niagara Falls.

Q. For this purpose?—A. Yes, sir. At Niagara Falls I expected Strobel with orders how we should go on.

Q. You did not see Crampton afterward?—A. No, sir.

Q. Did you see any written instructions at Halifax?—A. I saw the proclamation. Mr. Wilkins showed me the proclamation for enlisting.

Q. (Proclamation with British arms on it shown the witness; [385] same as on page —, ante.) Is that the one?—*A. Yes, sir, I saw that; Mr. Wilkins gave me one of them; he gave it to me in the Provincial Building to read it; he was secretary of Nova Scotia.

Q. What did he say it was for?—A. It was for the foreign legion.

Q. Did he say that this was the placard under which they were acting?—A. He told me if I should be engaged, I should go on to the States and raise troops, but that without this I could not be engaged, saying what Sir Gaspard said to me. I did not see Mr. Howe; he was not in Halifax at that time. I heard very often from him.

Q. Have you at any time seen Mr. Hertz?—A. Not in this business.

Q. Did he ever say anything to you about this business?—A. No, sir. When I came with Strobel, I heard from Halifax that we could not be engaged because we did not do anything in getting men.

Q. What do mean by that?—A. That we did not raise plenty of men, and squandered all the money, as they said.

WILLIAM ECKERT sworn.

This witness did not speak English, and was interpreted by Mr. Oehlschlager.

Examined by Mr. VAN DYKE:

Question. Can you write?—Answer. No, sir; I can read my name. I knew Mr. Hertz; I saw him at No. 68 South Third street.

[386] *Q. What did you go there for?—A. I went to enlist; I wanted to enlist in the British army.

Q. Did you enlist?—A. I did not enlist. I went down with a good friend of mine, whom I requested to bring me down; he did not go down with me, but suggested to me another who went down with me; my friend spoke for me, and said, "Here is a man who wishes to enter the British army."

Q. Whom did he say that to?—A. Mr. Bosschart and Mr. Budd. One of the gentlemen answered, "We do not busy ourselves with it; we will merely send you to Halifax, and then, if you wish to serve you can serve, and if you wish to work you can work;" that the men were enlisted in Halifax. My friend asked how much bounty-money in hand was received, and Mr. Budd told him he would receive as bounty thirty dollars, and eight dollars a month. Well, then, I asked whether there was nothing paid in advance or immediately for the few days I would have to remain here. They said they gave nothing; then I went away. They asked me what my name was. I did not write it. Mr. Bosschart wrote it.

[387] *Q. Where did he write it?—A. On a sheet of paper.

Q. Did you agree to go?—A. Yes, sir.

Q. Did you get a ticket for your passage?—A. Yes, sir.

Q. Who gave it to you?—A. Mr. Hertz.

Q. When was it he gave it to you; the day you sailed or before?—A. On Wednesday afternoon.

Q. Did you engage to go, with the intention of enlisting when you got there?

(Mr. Remak objected to the question as a leading one.)

Judge KANE. The question is too directly indicative of its answer.

Mr. VAN DYKE. What was it your intention to do when you got to Halifax?—A. I wanted to go to the Crimea.

Q. In the "foreign legion?"

(Mr. Remak objected.)

Q. (By Mr. VAN DYKE.) In what capacity did you want to go to the Crimea?—A. As a soldier.

Q. When Mr. Hertz gave you the ticket to go to New York, did he understand that it was your intention to enlist when you

[388] *arrived at Halifax?

(Mr. Remak objected.)

Q. Did Mr. Hertz, at the time he gave you a ticket to go to New York, know that it was your intention to go to Halifax?

(Mr. Remak objected. The objection was overruled.)

A. Mr. Hertz was not there the first day.

Q. I refer to the time he gave you the ticket. At the time Mr. Hertz gave you the ticket to go to New York, did he know it was your intention to enlist when you arrived at Halifax?—A. Mr. Hertz was not there when my friend brought me to the office.

Q. You have said that Mr. Hertz gave you a ticket to go to New York?—A. Yes, sir.

Q. At the time Mr. Hertz gave you this ticket to go to New York, did he know it was your intention to enlist?—A. I do not know whether the other gentlemen told me the reason why he wished me to go to New York.

Q. Had you told Mr. Budd your intention?

(Mr. Remak objected. The objection was overruled.)

A. He heard it.

[389] Q. On Monday?—*A. Yes, sir.

The counsel for the defense, Mr. Remak, in the course of the examination of this witness, frequently interrupted and attempted to correct the interpreter in his interpretation of the language of the witness. On the conclusion of the examination he called Mr. Oehlschlager to the stand, for the purpose of questioning him as to his interpretation of the witness, but, on after-consideration, waived the examination.

AUGUSTUS TITUS sworn.

Examined by Mr. VAN DYKE:

Question. Do you know Mr. Hertz?—Answer. Yes, sir.

Q. Which is the person?—WITNESS, (pointing to Hertz.) That is the gentleman, sitting there.

Q. State what you know of this matter.—A. Well, I was here in the city without work, and I had no boarding-house to go to, as my landlady had told me to leave; so I read of this place in the Ledger, and went down and saw Mr. Budd there and a couple of other gentlemen. I went in and asked them if this was the place where they enlisted them, and I was told——

[390] Q. Who did you ask that?—*A. The gentleman is not here; he was a stranger to me. Mr. Hertz was not there the first time.

Q. How long was this before you sailed?—A. It was about 3 o'clock in the afternoon of the day before. Then I was told that I could not see the agent now, that he was out, and to come in two hours after that time. I came in, and I saw Mr. Budd, and he asked my name, and I told him my name, and he wrote it down on a sheet of paper.

Judge KANE. How came he to ask your name?—A. Well, I don't know, without he wanted to put it down.

Q. Did you tell him what you wanted?—A. I asked him if this was the place where they enlisted, and he said no, it was not the place where they enlisted, but the place where they got men to take them to Halifax.

Q. For what purpose?—A. For enlisting. I gave them my name. My intention was only to go to New York. I was going to New York, and there I was going to leave them.

Q. Did you tell him that was your intention?—A. No, sir; I did not; I kept that to myself.

[391] *Q. You were going to outwit them, then, I suppose?—A. Well, I was going to try to; I did not know whether I would succeed.

Q. What did you tell them you intended to do?—A. I told them I intended to go out to Halifax, for the purpose of enlisting.

Q. When did you see Hertz?—A. On the morning we sailed I saw him. I went to the office, and asked him what boat I was to go on, and he said that he would be down and make arrangements. There was Mr. Hertz, Mr. Budd, Mr. Bosschart, and another gentleman standing talking together, and I went down to the boat and waited until Mr. Hertz came down. I cannot say whether he came with Budd or not. I stopped down at the boat, and before we started Mr. Budd went around the wharf to see whether any one else was off the boat, and when he found there was none there, he came on board, and just before we commenced to start he called us all up. He did not form us into a rank. Sometimes he came to us one by one, and sometimes two or three were collected together, and he would ask our names. We told

[392] him our names, *and he marked a cross, I think. I won't say it

was a cross—it was a mark of his own on the paper. At that time we went down to the navy-yard, when Marshal Wynkoop catched us. (Laughter.)

Q. Did you get a ticket?—A. Yes, sir; I got a ticket of Mr. Budd, at 68 South Third street. Mr. Hertz was not there at the time. I can read.

Q. (Ticket shown.) Is that the ticket?—A. That is the color of the card (green) I got. On the back was, "Pine St. wharf," and those are the letters, ("N. S. R. C.") I have had them in my head from that day to this, and ever will remember them.

Judge KANE. Perhaps you can tell us what those letters mean.—A. No, sir; I cannot. They stand for something I am not able to tell.

Q. You say you can read, (paper shown.) Is that the paper he marked your name on?—A. Well, I cannot say whether it was a whole sheet or half a sheet. He had it lying on a table.

Q. Well, your name is on that sheet?—A. Yes, sir; my name is on there, No. 9.

Mr. VAN DYKE. Is there any cross-examination?

[393] *Mr. CUYLER. There is a frankness about this witness that quite disarms cross-examination.

CHARLES WEAVER sworn.

Examined by Mr. VAN DYKE:

Question. Do you know Mr. Hertz?—Answer. Yes, sir.

Q. Can you point him out here?—A. (Pointing to Hertz.) That is the gentleman.

Q. Did you see him in March, 1855?—A. Yes, sir, down in Third street.

Q. What did you go there for?—A. I went down because I heard from some of my friends that they were enlisting soldiers for the British army there; I went down—it was an hour before they started—and I asked him whether he enlisted men to go into the British army; he said no, I do not enlist, but if you want to be enlisted I will give you a ticket to New York, and from there the officer would give me a ticket to Halifax.

Q. Did you tell him you would enlist in Halifax?—A. No, sir; I did not tell him that. I told him I wanted to enlist, and he gave me a ticket; he did not give me any money. He took my name.

[394] Was it written in a book or on paper?—*A. I suppose it was written on a sheet of paper. Mr. Hertz took my name; he wrote it.

Q. Did you go on board the boat?—A. Yes, sir.

Q. (Ticket shown.) Was it one of these tickets that you had?—A. Yes, sir; I had one of that kind. I went down to Pine-street wharf; Mr. Hertz was there the day the boat sailed. I went down with a friend of mine to the boat; I saw this man, Mr. Bosschart there, and he said this is the boat that goes to New York. Mr. Budd was on the boat; he was in command; he took my name on board the boat, and called us together the same like an officer. There was twelve or thirteen men together, and he had command of them; that is what I saw. He took the names on the list, and as he took them he called us together, and told us to go on that side or this; he mustered us into rank.

Mr. CUYLER. What do you understand by mustering into rank?—A. Well, we stood in a line, and he said fall in.

Q. Who told you that?—A. This young man, (pointing to Budd.)

[395] That is not Mr. Hertz?—*A. No, sir.

Q. Who is it?—A. Mr. Budd; that is the gentleman.

PATRICK CONROY, sworn.

Examined by Mr. VAN DYKE:

Question. You have been examined before in this case.—Answer. Yes, sir, before the commissioner.

Q. State to the court and jury what you know in this matter, and what you have heard from either of these defendants, Hertz or Perkins.—A. I never saw Hertz, but at the United States commissioner's office I had the conversation about this matter with Mr. Perkins.

Q. State when you had that conversation, and what it was.—A. Well, I was introduced to Mr. Perkins at the Pennsylvanian office. Is it necessary for me to state all of this matter?

Mr. VAN DYKE. If it relates to the issue now on trial, state all.

WITNESS. I was introduced to Mr. Perkins at the Pennsylvanian office some time last December, I suppose in that neighborhood; and a few days afterward I had a conversation with him at Mr. McGeoy's
[396] hotel, in *Walnut street, in which he said there were things he might wish to talk to me about; I did not understand it at the time, and, not knowing what he meant, I did not say anything; the next time I met him was at the Pennsylvanian office again; he was about leaving it in the evening, and he was cursing and ready to kill all about the office, damning everybody in the office; I asked him what was the matter, and he took me by the arm and we walked down a little; he said that he had just been writing a letter to one of the lords in England, who had charge of the government there; that he had everything right with the Pennsylvanian newspaper here, so far as siding with the government against Russia was concerned, and when the first thing he saw that morning, was an article directly against what he had written to England, and that the Pennsylvanian had deceived him; I passed it off carelessly, as I did not care what was going on between him and the Pennsylvanian, or the British government. I met him again some time afterward in the Exchange Hotel, and he called me to one side and told me that it was necessary
[397] *to raise a certain amount of men in this country for the purpose of raising a legion to go to the Crimea. I asked him how it was, and he said that such was the case. I asked him, then, whether there was any danger in enlisting men in this country for that purpose, for I had heard that there was, and he said no; that he had been down at Washington, and fixed all that. He said that Mr. Crampton sent for him, and when he went to Crampton, he sent him to Marcy, and when Marcy asked him all about it, he said he humbugged him about it, and told him he was only going to send the men to Halifax to dig a canal; that Mr. Marcy, in reply remarked that he was a pretty cunning fellow, and then it all passed over; it was all fixed, and there was no more danger at all about it; he then said to me that if I would choose to take a part in the matter, that he would guarantee me a commission in the legion for a certain number of men, and for a less number he could guarantee a non-commission; that if I would take an interest in the matter, he would fix things for me, but that it would take two or three months to do so; that I knew there were a great
[398] many men over the country who were suffering *from bad times, and who could be enlisted, and that he would make it to my interest to do so. I told him I would think about. The next time I saw him he was going directly from his office in Third street; from the steps of his office he went down to Campbell's cellar in Third street. He was there a minute or more, and then he came up and came over to me,

opposite the Exchange Hotel; he took me by the arm, and pulled me to one side, and asked me if I had done anything in that matter yet; I said no, I did not intend to do anything in the matter myself, but there were friends that might; he then said to me that he could not guarantee a commission in the regular army, but he could in the foreign legion, and if I had friends who would take such positions, he would guarantee them the same, and if I saw any who wanted to enlist to send them over to the office, 68 South Third street. I said I would do so, and he then remarked, I am now in a hurry; I am going down to the British consul's; I have news from Washington, and I will see you when I come back. I had no more conversation with him on the subject, ex-
[399] cept that he told me he was an agent of the British gov*ernment, and had three hundred or four hundred men to look after in this country, and pay them. He told me that on the occasion when he had to see me in a hurry; he repeatedly told me that he was an agent of the British government, and solicited my assistance in all these ways for the purpose of raising men for the foreign legion.

Q. Did he tell you where the enlisting was done?—A. He did; he pointed over to the office, No. 68 South Third street.

Q. Where was he at the time?—A. Standing on the steps of Durar's Exchange Hotel.

Q. How long before the arrest of Hertz?—A. Some two or three weeks.

Q. Are you in the volunteer corps?—A. Yes, sir; I hold the commission of colonel.

Q. Did he ask you anything about the commission you had?—A. Yes, sir, he asked me what commission I held, and I told him colonel of the Second Regiment of Pennsylvania Volunteers, and he said he could guarantee me a captaincy, if I would go, and he knew from my
[400] position here* that I could be of use to them, and he would make it of use to me. I have stated pretty near the whole substance of the conversations; we had a great many other conversations, but but there was nothing stronger in them.

Q. Did he tell you at any time, or do you know, that he actually engaged any person to go to Halifax for the purpose of enlisting, and, if so, what person?—A. I do not, sir; I know he tried to engage me.

Q. Did he not engage you?—A. No, sir; I refused him, and he tried to get me to solicit others to do so.

By Mr. GILLON:

Q. He said that you could be useful to him in that line of business?—A. Yes, sir.

Q. You are in business in this city?—A. Yes, sir.

EDWARD W. POWER, sworn.

Examined by Mr. VAN DYKE:

Question. Are you a military man?—Answer. I belong to a military company and hold a commission.

Q. Do you know anything about Hertz?—A. I do; I was at his
[401] office in South *Third street about the 20th or 21st of March, or thereabouts; I went to 68 South Third street, and went up stairs into a back room, and there I found some five or six men sitting around the table; I spoke first to this gentleman here, I think, Mr. Leob; I asked him whether that was the place in which they enlist men for the Crimea; he said that this gentleman, pointing to Mr. Hertz, was the person. I then

turned to him, and asked him what were the inducements offered to those men who had served in Mexico during the war. He said that any man who could come with a company, and capable of commanding them, would be entitled to a commission in the English army; that this legion was for the purpose of going to the Crimea; he asked me if I was connected with anything here; I told him that I was; that I then held a commission; and he asked me then what number of men there were; well, I said, we numbered from sixty to sixty-four, but there was not more than thirty equipped. He then seemed anxious that I should call again; I left him with the promise that I would call again; I did so, in company with Peter Somers, who was formerly first lieutenant of

[402] *the Continental Guards; I went there, and introduced Mr. Somers under a fictitious name; I did that for the purpose of ascertaining how they sent the men away, so as to have him ascertain that fact. We had a conversation, for the second time, with Mr. Hertz, and Somers laughed, and I thought the joke was being carried too far, and I kind of smiled, and then I saw the whole thing was settled, and we retired. On the 27th, the night before the arrest, a man by the name of Renners, I think, came to the armory while I was drilling the company.

Q. Was Mr. Hertz there?—A. No, sir.

Q. Do you know whether Perkins had anything to do with that office?—A. Yes, sir; the second time that I went there, that was on the Saturday, Mr. Perkins was sitting in the front room.

Q. When you land at the top of the staircase going up, you go into the back room of that office first, do you not?—A. Yes, sir; and that makes the front room the back room; there was two folding-doors between the two rooms, and they were partly open; the room fronting

[403] on Third street was used as the back or private office, *and the back room as the front office. There was a tall man there, from whose appearance and manner I supposed he was an English officer, or one engaged in the English service. Perkins was sitting on a chair leaning back, and as he saw me he drew his head back.

Q. Do you know from any conversation you had with Perkins, or are you aware, that Perkins has ever engaged any individual to go to Halifax to enlist?—A. Well, I would not, may it please the court, like to answer that question, because it would, to a certain extent, criminate me, so far as the law of the State is concerned.

Mr. VAN DYKE. I did not ask you anything regarding yourself with Perkins.

Q. Do you know whether he has engaged, hired, or retained, or made a bargain with any other individual?—A. I know that he left me one evening to go to New York for the purpose of attending to some business for Mr. Crampton.

Q. You do not exactly comprehend my question. Do you know whether he ever said to any individual, "I want you to go," or did he engage any individual to go to Halifax?—A. No, sir.

[404] *Q. Do you know what he was doing in the front office when you saw him there?—A. No, sir.

Q. What was your conversation at that time?—A. Mr. Hertz and I were speaking together about this company.

Q. Was that the only time you saw him there?—A. I saw him afterward come out; I went there with a number of persons, who waited on the outside to hear what was to be said, as they were determined that the thing should be broken up; and as we stood on the other side, Mr. Perkins came out, and went down into Campbell's cellar, and then he came out and over to the other side, and spoke to Conroy and some

others with him; my introduction to Perkins was that he came with a note to me as the second of a gentleman who had challenged a friend of mine to fight a duel.

Q. He told you he was going to New York to see Crampton?—A. Yes, sir; he said he had business with him; he told me that in Brown's drug-store.

Q. Did he tell you what business?—A. No, sir; he told me that he had a great deal of business to do now; that he was connected with the railroad, and had to see his friend Mr. Crampton in New York.

[405] *HUGH CASEY sworn.

Examined by Mr. VAN DYKE:

Question. Do you know Mr. Hertz?—Answer. Yes, sir.

Q. (Pointing to Mr. Hertz.) Is that the gentleman?—A. That is the gentleman.

Q. Do you know Mr. Budd?—A. Yes, sir; (pointing to Budd,) that's him.

Q. Did you go to the office No. 68 South Third street?—A. Yes, sir; I went there, and Mr. Hertz and I had a conversation. I saw in the Ledger that they were enlisting for the foreign legion there, and I went down and saw Mr. Hertz, and he told me to come back and he would give me a ticket; I went there on Friday and he gave me a ticket to sail on board the boat with, and twelve and a half cents, and told me that the boat would sail on Sunday, the 25th; I went back on Saturday with three other men who enlisted with me, and he gave me a quarter of a dollar. On Saturday afternoon I went back again, and he gave me nine cents, and on Sunday I went down to the boat, and she had sailed. I went to the office on Monday, and Mr. Hertz was not there, but Mr. Budd was there, and he told me to come back on Wednesday, and he would give me a ticket. On Wednesday I went down.

Q. What did you do with the ticket you got on the first occa-
[406] sion?—A. I gave that ticket up; I guess you have it now. *On Wednesday I went down there, and met Budd at the steamboat with Mr. Hertz; Mr. Hertz saw me, and told me to go on board. I went on board the steamboat, and there I saw the rest of the men had tickets in their hands, and I had none, and then I went up to the office, thinking that Hertz was there, to get a ticket, and when I came back the boat had sailed.

Q. Did Hertz give you the first ticket?—A. No, sir; Mr. Budd gave me the ticket himself for Sunday; I do not recollect getting it on Saturday; the 31st of March I saw Mr. Hertz.

Q. When you got back from the office, you say the boat had sailed?—A. Yes, sir; I went up to the office in Third street, and when I came back the boat had sailed; it was the Menemon Sanford; I then came back and saw Mr. Hertz, on Saturday, in Mr. Heazlitt's (I think that is his name) office; he was looking for bail, and I went over to him, and Hertz said to me, "Who is going your bail?" and I said, "I do not want any bail, because I come out of the boat to get a passenger-ticket and did not go;" and he then said, "Do you want a little money?" and told me to step around by-and-by and he would give me some money; I went around at 4 o'clock. Mr. Remak and him went up to Seventh
[407] and Chestnut *streets, and I waited in the room until he came back, when he gave me twenty-five cents, and said to me, "You will go and swear against me, and be damned to you."

Q. Did you tell him what you wanted to go to Halifax for?—A. I said times were very hard, and I would like to go to Halifax for the purpose

of enlisting in the foreign legion for the Crimea; and then he said that he would give me tickets to go there, and that I would get $30 bounty and $8 a month, but that he could give me no money until I went on to Halifax.

Cross-examined by Mr. REMAK:

Q. Did you not tell some people that you were going to see Mr. Van Dyke, and get him to send you to prison for the purpose of your support?—A. I did not, sir, use that expression; I told a person that I met on the street that I was fooled by the party, and that Mr. Hertz insulted me, and I would go as State's evidence against him.

PHILIP LABEL sworn.

As this witness could not speak the English language, Mr. Davis was, at the request of Mr. Remak, affirmed as his interpreter.

Examined by Mr. VAN DYKE:

[408] Question. Do you know Mr. Hertz?—*Answer. Yes, sir; (pointing to Hertz,) that is the gentleman sitting there.

Q. State all you know about the enlisting.—A. I read in the Democrat that some persons were required to go to Halifax, and I went to the office, No. 68 South Third street, and made some inquiries there if that was the place for enlisting; I made the inquiries of Mr. Bosschart; I then inquired if they engaged some people there; they told me that they desired to engage some persons to go to Halifax in order to work there; I then asked him if I could become a soldier if I went there; he made the reply that it was left optional to me to do so or not; that those who are willing to become soldiers may do so, and those who wished to work may do so too.

Q. Did you say whether you were willing to become a soldier, and that you wanted to become such?—A. No, sir; I did not intend to go there as a soldier; I made the inquiry, if when a person got there he enlisted, what he received; I was then told there was $30 bounty and $8 a month.

Q. Who told you that?—A. The same man, Mr. Bosschart.

Q. What conversation, if any, took place between you and Hertz?—A. The first day that I came there I saw this gentleman there; I then inquired what time the vessel would go; he told me that he did

[409] not know; *that Mr. Hertz was not in, and he could not tell me. I went there again on the following day and saw Mr. Hertz, and he handed me a card.

Q. (Ticket shown same as on page —, *ante*.) Was it a card like that?—A. Yes, sir.

Q. Did you sign any paper?—A. No, sir; I did not; that gentleman put my name down on some paper; Mr. Bosschart did so.

Q. Did you go to the vessel?—A. Yes, sir; Mr. Hertz told me where the vessel was, and I went toward it—that is all; I went on board, and that is all.

Q. Did you go to Halifax?—A. No, sir.

Q. Why not?—A. Because we were arrested before then.

Q. Who had command of you on the boat?—A. Mr. Budd.

JAMES JOHNSON sworn.

Examined by Mr. VAN DYKE:

WITNESS. Mathew Burk is my proper name; you will see it so on Mr. Hertz's list.

Question. How came you to get the name of James Johnson?—Answer.

I did not wish my name to be published in the papers so that my friends would know it; I gave my proper name to the court at the time.

[410] Q. Why did you not want your real name known?—*A. I did not want my friends to know that I was made a prisoner.

Q. Did you not give that name under oath?—A. No, sir, I did not; I told the commissioner, and the grand jury, and you, my proper name, and the circumstances of it.

Q. Do you know Mr. Hertz?—A. Yes, sir.

Q. When did you see him?—A. I saw him on the 27th of March.

Q. Did you see him before that?—A. No, sir.

Q. Was you on the boat?—A. Yes, sir; in the steamer Menemon Sanford, on the river Delaware.

Q. Had you seen Mr. Hertz before that?—A. I saw him the day before at 68 South Third street. We were taken on a Wednesday.

Q. How came you to go to his office?—A. I called first on Monday; I saw the advertisement in the Ledger of men wanting. I did not read it myself, but another man read it for me, and I went to see. Mr. Budd was there. I told him I had called from seeing the advertisement of soldiers wanted, and I said I wanted to enlist. Mr. Budd told me that I could not be enlisted there, but that he could tell me how I could get to Halifax, and said that I supposed that would do to get to Hal-

[411] ifax; he told me I must come once again. I called again that afternoon, which was Monday afternoon, and he told me that a boat had gone before, and it was a pity I had not been sooner. I called again on Tuesday, and Mr. Hertz was there; I told Hertz my business, that I had come to enlist, and the reply he made I cannot tell now, but it was "very well," or something to that effect; he told me to stay a while, and I staid a while and some more men came. I told him my name and he wrote it down on a sheet of paper; he also wrote some others. I told him when he was going to write it that another man had written it the day before, and he said, very well, I will take it again.

Q. (Paper shown.) Is that the paper on which your name was written?—A. That is my name on it, though I cannot say whether it is the paper on which Mr. Budd wrote my name the first day; I called on Hertz the day after; he did not tell me what bounty I would receive; I did not inquire; he gave a ticket and I was to go down to the boat.

Q. (The "N. S. R. C." ticket shown.) Was it a ticket like that?—A. I actually believe it was one of them green tickets; I think so,

[412] but would not swear positive*ly that it was a green ticket, though I actually do believe it was one; I recollect it having those letters ("N. S. R. C.") on it.

Q. What did he tell you to do with the ticket?—A. He told me I was to go down on board at Pine street wharf. I then went away, and called back again to the office, and I asked him "was I to go on board and say nothing to no one, or was there to be anybody there to receive me;" he told me to go down between 9 and 10, and go straight on board, and to tell the rest, if I saw them, to go on at the same time. I went next morning and did so, and went on board the boat and was taken about to the navy-yard, when they brought us back again.

Q. What took place when you got on board the boat?—A. I saw Mr. Budd on board, and we were called together, and an exchange of tickets took place; we were going on, and I thought in a fair way for Canada, and the next news that I heard was that we were all made prisoners.

Q. Did Mr. Budd call you together?—A. Yes, sir, he was there acting as a kind of officer or man in authority; he did not put us in military form, but called us together.

Cross-examination by Mr. REMAK:

[413] *Q. How much money have you received from the United States as witness-fees?

Mr. VAN DYKE objected. You need not answer that question.

Mr. REMAK. I only wanted the jury to know. You need not mind.

PETER MOHN sworn.

Examined by Mr. VAN DYKE:

Question. Do you know Mr. Hertz?—Answer. Yes, sir. I have known him since the 26th of March. I just saw him in the office, No. 68 South Third street.

Q. How came you to go there?—A. There was a man told me that there was an office to send men to Halifax to work. I was out of work and went there. That was on Monday afternoon, and I found nobody there but Mr. Budd, and that young man there, Mr. Bosschart. He told me to come next day, when Mr. Hertz would be home, and then I could know all about it. I went there the next day, and he said "Yes; he sent men to Halifax to work."

Q. What kind of work?—A. Any work that you pleased; and if I did not like it there I could get a free ticket back here again;

[414] and that if I wanted to go in the *army I would get $30 bounty and $8 a month. He told me to come in again about 2 o'clock, and he would tell me all about it. I went about 2 o'clock, and he said that Budd was going off next day at 10 o'clock, and he gave me a ticket.

Q. What colored ticket was it; red, yellow, blue, or green?—A. I do not recollect; one of the green, I guess; (ticket shown;) that is like it; Pine-street wharf was on the back of it.

Q. You went to Pine-street wharf?—A. Yes, sir, and I went on the boat.

Q. Who did you meet there?—A. I met Mr. Budd; he was there, and he took command of us.

Q. Did you ever see Hertz down there?—A. No, sir.

Q. You were arrested that day, were you not?—A. Yes, sir.

JOHN JENKINS sworn.

Examined by Mr. VAN DYKE:

Question. You are a deputy marshal?—Answer. Yes, sir.

Q. Will you state whether you had a warrant in the latter end of March for the arrest of certain parties, and whom?—A. The marshal had a warrant for the arrest of Hertz and others, and I accompanied him.

Q. State what you did then.—A. The marshal directed me to

[415] go on board *the steamer Sanford and arrest the party that were there. I arrested Mr. Budd, together with some twelve or fifteen men, whose names I do not remember. The marshal himself afterward went to the office of Mr. Hertz, and there arrested Mr. Hertz, Mr. Bosschart, and two others—four in all, I think.

Q. Mr. Hertz was among them?—A. Yes, sir.

Q. You arrested these men?—A. Yes, sir.

Q. ("N. S. R. C." tickets shown.) Do you know these tickets?—A. Each of the men had tickets similar to those upon their persons. I took them from them.

Q. (New York steamer ticket shown.) Do you recollect that?—A. I do not recollect that.

Q. (Book of Dr., containing cash account, shown.) Do you remember that book?—A. No, sir; I do not.

Q. (Book containing list of names shown.) Do you remember that book?—A. Yes, sir; I remember that book. I found it in the secretary which Mr. Hertz called his private secretary, in the enlisting-office. He gave me the key, and I opened it.

Q. (Receipt shown.) Did you find that there?—A. Yes, sir.

The receipt was read in evidence, as follows:

PHILADELPHIA, *March* 25, 1855.

[416] *Received of Mr. Hertz, $84, for passengers to Halifax.

A. WINSOR.

Q. Did you find this receipt of the Ledger for advertising, one and two-thirds squares, one-half month, $9.50, dated March 16, 1855, at the office, No. 68 South Third street?—Yes, sir; it was in the secretary; I recollect it.

Q. Did you find the receipt of the Pennsylvanian there?—A. Yes, sir. This receipt will be found on page —, *ante*.

Mr. REMAK. Q. Is Mr. Hertz's name in that receipt?

Mr. VAN DYKE. A. No, sir; it is not.

Q. (N. S. R. C. ticket shown.) Did you find any number of these tickets there?—A. Yes, sir; they were similar to these.

Q. What did you do with them?—A. I gave them to you.

Q. Do you recollect whether you arrested Michael Gilroy as part of that company?—A. Yes, sir.

Q. On the boat?—A. Yes, sir.

Q. Hugh Casey?—A. Yes, sir.

Q. James Johnson?—A. I do not remember the name.

Q. Charles Weaver?—A. I do not remember the name.

Q. Peter Muhn?—A. I do not remember that.

Q. Philip Label?—A. No, sir.

Q. Augustus Titus?—A. I remember that.

[417] *Q. Bremen Kernstein?—A. I do not remember that.

Q. William Finley?—A. No, sir.

Q. You remember Titus, you say?—A. Yes, sir; I believe they all were the parties on the boat, but I do not remember the names at this time, nor did I hear the names at that time; I remember Gilroy, Titus, and Casey.

Q. (Paper shown.) Do you remember that paper?—A. Yes, sir; I got that in his office; it was on the file. The paper was read in evidence, as follows:

PHILADELPHIA, 26*th of Thirdmonth*, 1856.

This is to certify that Mr. Julinas Lyncks is in sound health, and fit for any service.

BEIL, *Doctor*.

Q. (Papers shown witness.) Do you remember those?—A. Yes, sir; these were in the secretary.

Mr. VAN DYKE. The one is the paper which Mr. Budd stated contained the names of the persons he took, and the other appears to be a copy of the recruiting-book.

Examined by Mr. REMAK:

Q. Did Mr. Hertz, on the day of his arrest, give you the key of his office and the key of his desk of his own accord, freely?—A. I demanded them.

Q. Did he give them without any hesitation?—A. I demanded them

through you, and after consultation with him, you directed Hertz to give them to me.

[418] *Q. Did he give them of his own accord, or did I ask him?—A. I think that it was after you directed him to do it. I do not think I had any conversation with Mr. Hertz about the keys; it was with you.

Q. I think in your examination before the commissioner you said that at the time Hertz gave you the keys, and I had no objections.

Q. (By Mr. GUILLOU.) You mentioned that you arrested a number of persons on the boat, and you also said that you arrested at the office Hertz and some others, which you did not mention. You did not arrest Mr. Perkins there?—A. No, sir; the marshal arrested Perkins. He was not at Mr. Hertz's office, or upon the boat; I do not know where he was when he was arrested.

EDWARD C. WEBB affirmed.

Examined by Mr. VAN DYKE:

Question. Are you acquainted with Mr. Perkins?—Answer. I am.

Q. Have you ever had any conversation with him previous to the 28th of March in relation to recruiting for the British service?—A. Yes, sir. I cannot speak as to the date, but during the time the enlistment was going on in Third street, opposite Dock, I met Mr. Perkins in Dock

[419] street, I think at the corner of Third and *Dock, and we walked down as far as Walnut and Dock streets, and there stopped; a conversation arose between us as to the enlistment going on, or said to be going on, in one of those buildings on Third street; he stated he was hiring men at $1.25 a day, and sending them to Canada or Nova Scotia, or some other place in the British Provinces; I asked him for what purpose; whether they were to go in the foreign legion to serve in the Crimea; he said he employed them nominally for that purpose—I do not know whether I use his language, but I give the idea—of working upon a railroad. I remarked to him that I thought they would find their way into the barracks, and he said he had no doubt of that, or he supposed so, or something of that sort.

Q. Did he state to you at any time whether he was doing this at the suggestion or by the advice of any higher authority than himself?—A. He did; he told me he had not been long from Washington, and that he had had an interview with Crampton, the British minister, while there, in relation to this subject, and that he had been called to Washington in consequence of some disclosures made in Philadelphia, or

[420] other places, about the matter; I understood him *to say that he or Crampton waited upon Mr. Marcy, or that Crampton told him that he had seen Mr. Marcy and had entered into an explanation about the course they had pursued in Philadelphia, and that after he had explained, Mr. Marcy either clapped him upon the shoulder—Perkins or Crampton, I do not now distinctly recollect which—and said, "You are a *cunning dog*, you have not violated any law of this country."

Q. Did he tell you what he was doing?—A. He said he had employed a large number of men; he mentioned the number, but it has escaped my memory; that he employed them at $1.25 a day to go into the British Provinces, nominally to work upon the railroad, but really to go into the army.

Mr. GUILLOU. Did he say that?—A. That is not his precise language, but that is the idea; it is impossible for me to recollect his language.

Q. Give the substance of it.—A. As near as I can recollect, he said that he had employed a large number of men, and had dispatched, I

think he said, five hundred already, nominally to work upon the railroad in one of the provinces, but he expected that they would find their
[421] way to the barracks; I asked him whether he did *not employ them for that purpose; well, he said, he did not care a damn where they went after they got there; that his purpose was to get them there, and then they might take care of themselves.

Q. Did he say that the British authorities would take care of them after they got there?—A. I cannot say with accuracy whether he did or not. He talked very fast; he was in a talking mood and said a good deal. I saw from his flushed face that he was in a talkative way.

Q. Did he at any time try to get you to write editorials in your paper on this British question?—A. He did. He was in the habit of coming into the Pennsylvanian office nightly and daily, long before I knew who he was. After he had been coming there several weeks, he ventured into the editorial department and conversed with the telegraphic reporter, Mr. Johnson; he entered into conversation nightly with me upon the subject of the war in the Crimea, and contended that the democratic party ought to take ground in favor of the allies; that, in fact, the United States, as a general thing, should do so, because she was the daughter of Great Britain; our people spoke the same lan-
[422] guage, and were educated in the same literature, and so on. *He frequently grew warm upon the subject, and I listened to him, and repeatedly while he was talking upon the subject I was writing an article against the allies and combating his argument as he was progressing.

Q. Which is Mr. Perkins?—A. I know him very well; I have seen him almost every day, but I do not see him now in the room.

Mr. GUILLOU. There is no difficulty about that.

WITNESS. He always said that he was an agent of the British government, and that he was in correspondence with Lord Palmerston, and I think Lord Clarendon. He gave me to understand that he was a tory, and that the tory party in England was the only party that knew anything, [laughter;] that they were always able to carry on the government properly; and that the whig party was composed of dunces [laughter] who always got into difficulties, and were the bitter enemies of this country. He said that he was a correspondent to several newspapers, and mentioned particularly the Times, and stated that he had, with every mail, sent a file of the Pennsylvanian to Europe to the Times. He also spoke of Lord Brougham, and said that he was in correspondence with him.

[423] *Q. Did he say the correspondence was on this subject?—A. No, sir; I do not think he did.

Q. Did he mention the subject?—A. He was talking about this subject at the time he said this. He complained about the tone of the articles in the Pennsylvanian, and showed a good deal of feeling. He said that he had written to his employers in Europe, and had assured them that the democratic press in this country was all right, which I believe did not happen to be the case, [laughter,] and that they would think it very strange that he should give them such information when they found the tenor of the articles against the allies so ultra and so strongly in favor of Russia.

Judge KANE. Did he classify Brougham among the whigs or the tories?

WITNESS. I do not remember whether he classified him or not; he said he corresponded with him.

Mr. GUILLOU. May it please your honor, he was like the man in the play, "he received letters from Constantinople." [Laughter.]

Q. Did he speak of this as confidential?

WITNESS. Yes, sir, he did; and remarked on several occasions, that what he told me was contained in some letters which he had
[424] just received, *but could not show the letters to me. [Laughter.]

Judge KANE. Was there any relation between you and him which would have suggested the propriety of his telling you this?—A. No, sir; he is excessively talkative, but is a man of large information, obtained by travel, and is a man of education. He spoke of his being lieutenant in the British army in India, and was promoted to a captaincy by the brevet; that he had been there, and was in Hindoostan, and in that terrible fight in the mountains of Affghanistan, where the British army was literally destroyed. He also spoke of his wounds but never showed them. [Laughter.] He also spoke of his having been directed to superintend the embarkation of troops to some part of Africa or Hindoostan.

Q. By Mr. VAN DYKE. You are the editor of the Pennsylvanian?—A. I am.

Q. And that is what induced this conversation with you?—A. Yes, sir.

Q. You were at the time editor?—A. Yes, sir.

Judge KANE. And your press was at the time unfriendly to his project?—A. It has been during the year and a half that I have been editor, and was so, I think, before. I did not like the threatening remarks
[425] toward the United States of some of the gentlemen *high in power in England and France, and I thought we had better take care of ourselves and put our house in order, and therefore I wanted the allies soundly drubbed.

Q. By Mr. VAN DYKE. I believe you have stated in substance everything?—A. As far as I recollect.

Q. Did he at any time say he engaged, or retained any person to go to Halifax, with the intention of being enlisted after he had got there?—A. Well, he spoke in general terms, and left the impression upon my mind that he had employed those men for that purpose, and had some understanding with them, that after they got there they were to go into the barracks. He may have mentioned them by name, but I have no recollection of it; he left the impression upon my mind that they were employed for that purpose.

Q. Have you stated fully the conversation which he repeated to you as having had with Crampton upon that subject?—A. I cannot
[426] recollect it; he talked a good deal upon that subject, and endeav-*ored to impress me with the idea that he was a very great man and knew the secrets of the British cabinet.

Q. You were never at this recruiting office, No. 68 South Third street?—A. I passed by it daily, and saw something was going on; but did not know what. I saw several persons going in and out, and saw him repeatedly come out, which led me to suspect that he was a party in the matter.

Cross-examined by Mr. GUILLOU:

Q. I do not think you understand a question of the judge. He asked you whether the opinion expressed in the Pennsylvanian was adverse to the project of the defendant, and as I understand you, you an-
[427] swered that it was adverse to the war in Europe?—A. It has been against this project of enlisting, and it has been very severe. It was the first that denounced it and exposed it.

Q. State whether Perkins is not a man who talks a great deal?—A. Yes, sir; he talks incessantly. He is a man of large information, obtained by travel, and is a man of education, but not much judgment.

Q. His temper rises pretty high sometimes?—A. Very.

Q. Mr. Conroy mentions an instance when he left your office, cursing all in the office.—A. He was frequently excited about the subject, and I would then draw him out to the length of his tether.

Q. And you were writing articles, firing away at the allies, and loading your guns with the ammunition he furnished you?

Mr. VAN DYKE. May it please the court, having, as I think, proved a clear *prima facie* case against one of the defendants, (Hertz,) and submitted all the testimony I have to offer against the other (Perkins,) I deem it unnecessary to extend the examination of the witnesses relative to Mr. Hertz, I therefore close for the present the case of the Government.

[The court then took a recess for half an hour.]

The district attorney, having closed his case, the counsel for the defense said they had no testimony to offer.

[428] *Mr. Guillou, for Mr. Perkins, asked the court to instruct the jury to return a verdict of not guilty as to Emanuel C. Perkins, there being no evidence to hold him.

Mr. VAN DYKE. Is it the intention to make a witness of the defendant?

Mr. GUILLOU. No.

Mr. VAN DYKE. This application is entirely within the discretion of the court, and, I presume, might be granted, if the ends of substantial justice were to be served by so doing; but as Mr. Perkins is not to be put upon the stand, nothing is gained to either of the defendants by separate verdicts. I am free to admit that, under the former ruling of the court, I have not made out such a clear case against the defendant Perkins as I should have liked, but I prefer the going jointly to the jury as they now stand. The result, no doubt, will be the same to Mr. Guillou's client.

Mr. GUILLOU. Under the remarks of the district attorney, I withdraw my application.

Mr. Van Dyke, in summing up for the United States, said: He did not deem it necessary further to examine the witnesses which could be produced. That he was satisfied the testimony which had already been submitted was conclusive in favor of the Government on all the questions which had been submitted to the jury. He had but very few

[429] suggestions to *make at the present time, and such he should address to the jury, more through the medium of the court than directly to themselves, because it was his belief that under the charge which the court would give of the law bearing upon the case, the jury would have no difficulty in finding the defendant Hertz guilty in the manner and form as charged in each and every of the bills of indictment laid before them.

The act of Congress, may it please the court, provides, (I recite it from memory, and the court will correct me if I am wrong,) First. That if any person shall, within the territory or jurisdiction of the United States, enter himself in the service of any foreign prince, &c. This is one distinct and separate misdemeanor created by the act.

Second. If any person shall hire or retain any other person to enlist or enter himself in the service of any foreign prince, &c. This is another and the second distinct misdemeanor created by this act.

Third. If any person shall hire or retain any other person to go beyond the limits or jurisdiction of the United States, with the intent to enlist or enter himself in the service of any foreign prince, state, colony,

[430] district, or people, as a sol*dier—not as a soldier on board any

vessel or letter of marque, as has been contended, but as a soldier according to the general common acceptance of the term—or as a mariner on board any vessel or letter of marque, &c.

Now, these three are distinct and separate offenses. The first is that of a person enlisting or entering into the service of any foreign prince, state, colony, district, &c. In relation to this, he said, the defendant is not in any manner charged in the indictment, and, therefore, it is unnecessary to embarrass the court and jury in taking into consideration any facts which relate to an intent on the part of the defendant to enter and enlist himself. Neither has the defendant, nor any other person, been charged with having been absolutely enlisted within the territory or jurisdiction of the United States; nor is the defendant, or any one else, charged with having gone beyond the limits or jurisdiction of the United States with the intent to enlist.

What, then, is the charge? What the only issue upon which I ask this court to charge the jury, that the Government have made a clear case? It is, first, that the defendant hired and retained some persons to enlist within the limits or jurisdiction of the United States. This crime is charged in two ways, in the first two counts in the indictment; and secondly, that the defendant has, within the jurisdiction of the United States, hired and retained certain persons to go beyond the
[431] limits and jurisdiction of the United States, with the *intent to enlist when they arrived beyond such limits and jurisdiction. This crime is charged in various forms in the four remaining counts of the indictment.

It is no offense under the statute, in Muhn, or Budd, or any one else, to be hired. So that those recruits who have voluntarily come upon the stand, and confessed their participation in this lawless transaction, have confessed no crime. If A hires B to go beyond the limits of the United States, with the intent mentioned in the act, B having agreed with A, within the limits of the United States, to depart with the intent to enlist, the crime or offense is not committed by B, because he merely engaged with A to go, but the offense is committed alone by A, who hired him, for so far as the going beyond the limits of the United States, with the intent to enlist, is mentioned in the act, the offense consists in hiring or engaging the person to go, and not in being hired or engaged to go. And the court is asked so to charge the jury. Then, as to the intent, what is meant thereby, and who must have such intent. On this point the court is asked to charge the jury that the intent mentioned in the act is the motive in the mind of the person hired, and has no reference to the design of the person hiring, except that the person hiring
[432] believed, or had reason to sup*pose, the person hired really intended to enlist, when he should arrive beyond the limits of the United States, and that he hired him for such purpose; that if the jury, from all the testimony, are satisfied that Hertz, at the time he engaged Muhn, Budd, Weaver, or any other person mentioned in any of these bills of indictment, to go beyond the limits of the United States, and furnished him with the facilities to depart, had the intention to enlist in the British military service, then that point of the act which speaks of the intent is sufficiently established.

Believing that the learned court will give the jury in charge the law as he has stated it, Mr. V. called the attention of the jury to the principal features of the evidence in the case. He contended that he had established every point made in his opening remarks.

First. He had shown by incontrovertible testimony that the necessities of the British government, resulting from the disastrous condition

of their army in the Crimea, and the unpopularity of the cause of the Allies at home, compelled them to hazard the enlistment of soldiers within the limits of foreign neutral nations.

Second. That in the accomplishment of this design, the Eng-
[433] lish authorities at home, and their *representatives on this continent, had, in gross violation of the laws of the United States, concocted and partially matured a plan for procuring, within our territorial limits, sufficient men to supply the forlorn hopes of an unpopular war, and regain the lost prestige of a warning administration.

In support of these points, Mr. V. adverted to, and commented upon, the testimony of Captain Max F. O. Strobel, Colonel Burgthall, Colonel Rumberg, Dr. Reuss, Mr. Bucknell, Mr. Budd. The truth of their representations had not been questioned, and the jury are bound, under their oaths, to regard their evidence as conclusive.

Third. That Henry Hertz, the defendant, was an agent of the English government in the accomplishment of this general plan and design. That he had been employed for that purpose by Mr. Crampton, Her Britannic Majesty's envoy extraordinary, the highest British functionary known in the country, as also by Sir Joseph Howe, the general agent, specially sent to America for this purpose, and by Sir Gaspard Le Marchant, the governor of a neighboring British province.

Fourth. That in pursuance of such employment, this plan was regularly carried out by the defendant. That he did, in the city of
[434] Philadelphia, *engage at least two hundred men to go beyond the limits of the United States, with the intent to become a part and parcel of the British foreign legion. That in order the more effectually to accomplish this design, he opened, under the auspices of his English employers, a recruiting office, and advertised in the pub papers, and posted through the streets placards bearing the Que arms, inviting men to his office. That the persons calling in answe such proclamations were sent by the defendant to Halifax, who, when there, were attested, and mustered into the military service of the British government.

Fifth. That Mr. Hertz, at the time he was thus engaged in hiring and sending men beyond the limits of the United States, well knew that it was the intention of the persons thus hired and sent to enlist in the service of Her Majesty the Queen of Great Britain.

Mr. V. argued that the affirmative of each of these propositions was fully sustained by the testimony produced by the Government, and called the attention of the jury to that portion of the evidence which severally related to them. He said the character of the witnesses was unimpeached and that their testimony had been abundantly cor-
[435] roborated by the written evidence *which he had been enabled to produce. That there could be no difficulty in finding a verdict of guilty as to the defendant Hertz. That if the jury believed both defendants guilty they should so find. If, on the contrary, they did not think a case had been made out against Perkins, they should acquit him and find a verdict of guilty against Hertz. They could separate their verdict.

As to Mr. Perkins, Mr. V. said that he did not intend to press for a conviction where the evidence does not in the clearest manner justify him in so doing. That however much he might himself be convinced of a defendant's guilt, it was his duty to prove him so, and that beyond reasonable doubt. From the intimation of the learned court when this case was before it on writ of *habeas corpus*, he presumed his honor would require the Government, under the present form of indictment for a

statutory offense, to prove an actual hiring or retaining of some one of the individuals mentioned in the bills. Should such be held to be the law under this statute, he was compelled in candor to say to the jury that he had himself, under the testimony, a doubt as to Perkins having been proved guilty. He regretted such was the case, but having brought all the evidence he could to bear against him, he left him
[436] in the hands *of the jury without any expression of his private opinion as to that defendant's guilt.

Mr. V. closed his remarks by a severe commentary upon the baseness and perfidy of the persons engaged as the chief actors in this flagrant attempt to violate and evade the laws and treaty obligations of the United States, and expressed the hope that the result of this case would vindicate the action of the Government in their determination to maintain our national integrity with every nation of the globe, whether it is or is not in accordance with sinister purposes of Great Britain. By forcing this indictment thus against this defendant, the President of the United States has struck as near the throne of Her Majesty as he is enabled to do in the shape of a criminal prosecution. The extended privileges and peculiar protection given to a foreign minister prevents, so far as he is concerned, the application of the criminal code of the country, although such foreign minister may be proved guilty of acts which, if committed by a private individual, would make him a felon. Were it not so, I think I am justified in saying I would this day, by the direction of the President, be trying Mr. Crampton, Sir Joseph Howe, and Sir Gaspard Le Marchant, instead of their humble in-
[437] strument, whose conviction is now ask*ed at your hands. The jury, however, will leave these gentlemen to the only power legally authorized to take care of our public safety, by demanding reparation from their government, and you, gentlemen, may rest assured that in due time they will be called upon by our able and faithful officers at Washington to make proper atonement for the gross insult which they have offered to our laws and our people.

If, on the contrary, after I have in this trial, instituted by the direction and with the cordial approbation of the National Administration, proved the defendant so clearly guilty, as the instrument and agent of Mr. Crampton and his confederates, you should, on account of any sympathy which may be thrown into the jury-box, acquit him, your verdict will be the strongest argument which will hereafter be used to protect Her Majesty's agents in their impudent intermeddling with the affairs of this continent. Confident, however, that you are men devoted to the institutions and political policy of your own country, and, as such, are ever ready fearlessly to defend them, I leave in your hands the honor of the Government and the rights of all those who seek shelter beneath its broad, protecting ægis. Weaken not that power of protection
[438] *by your verdict; stain not that honor by one moment's hesitation, in your approval of the determination on the part of the Government to preserve every feature of our constitutional vigor, as well from the jealous designs of foreign powers as from the fanatical treason of domestic foes.

Mr. Van Dyke having concluded, he was followed by Mr. Stephen S. Remak, who made a powerful appeal to the jury in behalf of the defendant, Hertz. He spoke for two hours and a half, giving a full history of the case, reviewing the testimony which had been submitted, and dwelling with great power and eloquence upon the law bearing on the subject. It would have afforded us great pleasure to be able to pre-

sent his speech in full, as taken by our reporter, but want of space forbids.

Mr. CUYLER. May it please the court, gentlemen of the jury: You are weary, gentlemen, and long to be released. I shall detain you but a few minutes by the remarks it is my duty to make to you in this case.

The facts of the case have been elaborately analyzed and discussed by my colleague, and I deem it unnecessary to pursue the path in which he has preceded me, in reviewing and digesting the testimony you have listened to so patiently in this case. The duty which has fallen [439] to my share, may it please *your honor, is chiefly that of inviting your attention to the view entertained by the defense of the true construction of the act of Congress under which this indictment is framed, trusting, if you shall agree with us in that construction, that the jury will not find in the evidence in this case that a violation of the wholesome provisions of this act of Congress has taken place.

You cannot have failed to notice, gentlemen of the jury, in the progress of this case, that the names of those high in authority and official rank have appeared, and often appeared, to be mingled in the transactions from which these indictments have sprung. Mr. Barclay, the consul at New York, Mr. Matthew, the consul at Philadelphia, Mr. Crampton, the British minister at Washington, have all of them appeared as prominent and earnest actors in the scenes which have been detailed in the evidence before you. Among the humblest of all who have been named is this poor and unfortunate man—a stranger in a strange land, forlorn, friendless, and deserted—for whose conviction the zeal and learning of the district attorney and the power of the Government have been so earnestly and sternly pressed upon you. And here, pausing for an instant, let me pay my tribute of respect to the [440] learned district attorney *for the candor and liberality with which he has conducted the case, and for the more than usual fullness, perfection, and ability with which he has prepared and managed this prosecution. The power of the Government, so ably exerted and directed by him in this prosecution, is in strange contrast with the preparation this poor and friendless man has been able to make for his defense.

I cannot suppose, gentlemen of the jury—I will not suppose—you will not, I trust, suppose for an instant, that these high functionaries of a foreign, but friendly state, dwelling within our borders, have consciously either evaded or violated the provisions of any of the laws of the land. You will not believe that these gentlemen of standing, character, and intelligence, have deliberately planned an infraction of the laws of the country, and then left this humble instrument of their designs unfriended to bear the severe penalty of a law broken under their advice, and in the execution of their requests.

You will the rather, gentlemen, believe with me, that, conscious of their own integrity, and with the law in full view before them, and with experience and capacity to construe the law aright, they so ordered their own course, and so directed their subordinate agencies, that no [441] violation of the *law should anywhere take place. This, gentlemen, I trust, you are now about to find. In a word, I shall submit to you that no offense is proven within the construction of the act which I shall ask the learned judge to give you.

May it please your honor, the offense with which this man is charged is unknown to the common law. The right of any man to expatriate himself cannot under our law be questioned, except so far as the statute

may have forbidden it to be done, under certain particular circumstances, or with a certain intent which the statute forbids and punishes. Such a statute is the subject of strict construction. If the facts are not within its fair spirit and construction, the offense is not made out, and it is your duty to acquit. Now, what is the offense created by the statute, in derogation of that which otherwise would not be unlawful or in any way punishable. The second section of the act of Congress of April 20, 1818, under which the indictment is pressed, provides, that if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States, with intent to be enlisted or entered in the service of any foreign prince, state, colony, district or people, as a soldier, &c., "every
[442] *person so offending shall be deemed guilty of a high misdemeanor," &c.

The offense does not consist of course in a person hiring or enlisting, and there is nothing of that kind in the case, but it consists either in hiring or retaining other persons to enlist, or hiring or retaining other persons to go beyond the limits of the United States with intent to enlist. The offense then is "the hiring or retaining." Now that means something more than mere persuasion. It does not mean that the mere exercise of an influence which operates upon the reason of a person and induces him to go, creates the offense. It must be a "hiring or retaining," or, in other words, it must be the creation of a legal obligation, or of that which, irrespective of the provisions of this act of Congress, would amount to a contract or legal obligation, and be capable of enforcement as other legal contracts are. I submit, then, to your honor, this as the true construction of this act, and I ask you so to instruct the jury.

Now, gentlemen, upon the whole testimony in the case, has the evidence raised in your minds a conviction, free from all doubt, that there existed between Mr. Hertz and any of the several parties named in these indictments, a valid, legal, binding contract "of hiring or retain-
[443] ing" them to enlist or to go beyond *the limits of the United States with intent to enlist? If it has not, it is your duty to acquit. Can you upon your oaths, on this testimony, say to me there has been such a conviction established in your minds? Turn with me for a moment to the testimony. I shall not weary you with its details. But tell me, witness after witness was examined before you, and did they not almost with a unanimous voice tell you that they were not enlisted in the service of any foreign prince or state, nor placed under any obligation to enlist, but simply were to be transported to Halifax, and they were in the exercise of a perfectly free and independent judgment, either to enlist in the service of the Queen, or to decline to do so, as they might in their mere discretion see fit to do? It is true there have been several witnesses upon the stand whose testimony might receive a different construction, but remember, gentlemen, the disadvantages under which these witnesses labored. They were foreigners—Germans—who spoke our language imperfectly, incapable of expressing as you or I would do those nicer shades of meaning which are needful to convey a true and precise impression of the facts. You will not say to me that such testimony, and so little of it, will bear down on your minds the full, strong current of other testimony, some of it written and precisely em-
[444] bodying the exact plan and intention, *much of it oral, but clear and exact and perfectly consistent with that which was written, and all showing beyond question that no man was "hired or retained" in this

country for any purpose whatever, but that they were simply persuaded to go to Halifax, and when there were in the perfectly free exercise of their judgments in their mere discretion to determine either to enlist or to refuse to enlist as they might then choose.

I can feel no doubt, gentlemen of the jury, that you will find this to be the weight of the testimony. If you do, I ask you to acquit. If you do, you will find there did not exist, between Hertz and these parties, a contract such as, irrespective of this act of Congress, would be valid, legal, and capable of being enforced, and so finding, as there was no "hiring or retaining" within the meaning of the act, you will acquit.

Gentlemen of the jury, I represent a very humble man, a poor, desolate stranger. If the law has been violated, which, in view of the construction I have just given you, it plainly has not, there are others upon whom, with much more justice, its penalties should be visited. Let us shield this man, whose highest offense, if offense he has committed, is ignorance of the law, and let those wiser men, of higher rank, bear the penalty. This question should be settled elsewhere, not here. If our laws have been outraged, the government of Great Britain has
[445] done it. Let that matter be *settled at Washington, and not in an account between the Government and this obscure and humble man. But, gentlemen, I will not detain you any longer. You will not, I am sure, find, in the facts of the case, that the law has been broken anywhere or by any man. You will not find that mere persuasion is the creation of a legal contract, or that a man who is left free to the unpledged exercise of his own mere discretion has been "hired or retained" within the meaning of this act. And so thinking and so finding, you will rejoice to restore this unfortunate man to his friends and his home, and to the wife and the children which wait for and long to welcome him there.

Mr. GUILLOU said: May it please the court, gentlemen of the jury, if you will bear with me at this late hour of the day for five minutes, I will close my duties within that time. It is the boast of us all that we live in a land of laws; it is our safety that the law is administered by two tribunals, the one explaining the law, and the other applying it to the facts in evidence. The indictments upon which you are to pass, some 12 or 13 in all, charge the defendant, Perkins, together with Hertz, with having enlisted specified individuals, A, B, C. The crime with which he stands indicted is the enlistment of persons to serve in a foreign country.
[446] I have turned my attention carefully to the tes*timony in this case, because, when counsel makes an assertion to a jury on a point of fact, it is his duty to ascertain that he is right in his statement, and I say, after examining this testimony, that there is not any portion of it which shows any connection of Perkins with Gilroy, Budd, Casey, or any other person whose name is in any one of these bills as a party sent away or enlisted. If I am right in this statement of the testimony, there is an end of this indictment, for the law requires that the party charged be shown, by the evidence, to have acted in relation to the particular crime which is averred in the particular bill, and in relation to the particular party, the subject of the crime. You will, therefore, when you take up a bill, remember this, and ask yourselves whether Perkins had anything to do with the hiring or enlisting of the man whose name is mentioned in it. If there is no evidence to show that he had, you will return a verdict of not guilty as to Perkins; and, as you take up each bill, so examine and declare upon it. As to the other defendant, I have not a word to say; my friends on the other

side have fully gone into the case, and given you the law and the facts bearing upon it.

There is this principle which rests at the basis of law, that the crime must be proved to have been perpetrated. Therefore, so far as the defendant, Per*kins, is concerned, consider him [447] not connected in this case with the other defendant, but on trial alone, and then ask yourself the question, did Mr. Perkins do anything at all to enlist or get off Gilroy or any other person? You will find that the burden of the testimony bears directly against such a conclusion, and shows that he had nothing to do with it. I think, therefore, that you will be able to arrive at your verdict readily and without difficulty. It would be a task of the most painful character, if his honor, after hearing the evidence in this case, were to proceed to pass sentence on this defendant, however indiscreet in speech he may have been, as you can but entertain a great doubt of his guilt. The law says that if you have a reasonable doubt of the guilt of the person charged, such a doubt as would arise in any reasonable mind, such doubt is the safeguard of the defendant, and entitles him to an acquittal. I hope you will have no difficulty in this case, but that at least you entertain a doubt which favors the defendant, and will relieve his honor from passing sentence. I ask you to find a verdict of not guilty as to the defendant Perkins.

Mr. VAN DYKE, in reply, said he would follow, with pleasure, the example of his learned friends on the opposite side, and briefly [448] bring this protracted *trial to a close. He desired to confine himself strictly to a reply to the positions taken by the counsel for the defendants.

The act of the 20th April, is one of easy and simple construction. The learned gentleman, Mr. Remak, who first addressed the court in behalf of the defendants is wrong in supposing that there have been no judicial decisions, which shed light upon the act of Congress. In 1832, John D. Quincy was indicted under the third section of this act, for fitting out and arming a vessel, with the intent that such vessel shall be employed in the service of a foreign prince. The case went up to the Supreme Court of the United States, and is to be found in sixth Peter's Rep. It will be observed, upon examination of that case, the law in reference to our neutrality is somewhat different from the general criminal law of the country. The argument there made by Mr. Williams for the United States was, that these acts of Congress should be construed according to the meaning and intention of Congress, and in support of this argument he cited that part of Judge Marshall's opinion on the penal laws of the United States, as reported in the case of United States *ex.* Wiltberger, 5 Wheaton 95, "that although penal laws are to be construed strictly, they are not to be so construed as to defeat the obvious intention of the legislature." This argument was answered in an able manner by Mr. Wirt, but Justice Thompson, delivering the opinion of the court, said, "it was sufficient to establish, by this testimony, the committal of the crime, according to the plain meaning of the words used in defining the offense."

The whole policy of our neutrality laws require a liberal construction of the statute, if, indeed, it is to be effective in preserving our neutrality between foreign belligerents.

[449] *It is also contended by another counsel of Mr. Hertz, Mr. Cuyler, that there must have been an absolute contract and consideration paid. This position is not the law, as I understand it. The retaining, whether by coaxing or otherwise, was sufficient. The engag-

ing, which is the meaning of the word retaining, whether by means of present pay or the promise of future compensation, is sufficient.

But here there was an absolute contract. This is a question of fact for the jury, and if they so find, any difficulty on the question raised by the eloquent counsel is avoided. The conditions of the contract were verbal, and its execution was consummated by the signatures of the parties to the roll-book, each one signing that book, clearly understanding what he was to do, and what he would receive for it. That contract stands for all legal purposes in the same position as though it had been entirely in writing, and, were it not from its very nature and general character void *ab initio*, could be enforced in any court of common-law, and the bounty or pay mentioned for the services could be recovered from any private contracting parties. Debts and damages are daily recovered upon agreements much more carelessly made. The terms of the contract were, on the one side, that Peter Muhn and William Budd, and a score of others engaged, should go to Halifax for the purpose of enlisting; and on the other hand, certain remunerations were to be paid them by the defendant's principal for the performance of
[450] their *part of the agreement.

The pay was to be received, it is true, after they arrived at Halifax; part of that pay was the privilege of being received into the Queen's service. They were, also, to receive a free ticket and passage to their destination. This contract was considered so binding that one of the witnesses tells us that force would be used at the barracks to compel the enlistment when there, and even the poor privilege of repentance was not allowed to the indiscret and hasty. They were, also, to receive a monthly pay. Now, if this is not an absolute hiring of a party to enlist, then nothing is, and the act of Congress is a dead letter, and should be repealed.

Mr. CUYLER. What was it a contract to do?

Mr. VAN DYKE. A contract, sir, to go beyond the limits of the United States with the intent to enlist in the British service. And if any doubt existed on the question of intent, such doubt is removed by the indisputable fact that the men actually did enlist, and are, in all probability, at this moment in the Crimea.

It is admitted that the parties who make this contract must be indicted in the district where the contract is made, in the place where the parties are engaged. In a case which has recently been tried before the United States district court for the Massachusetts district, the case of United States *vs.* Lewis Kazinski, reported in Eighth Monthly Law Reporter, p. 254, the prosecution failed substantially because the hiring took place in New York, and the trial was had in Boston, the court ruling that the expression of intent made in New York could not be given in
[451] evidence, and confined the *prosecution to expressions of intent made in the district where the crime was charged to have been committed, and the recruits on board the vessel upon which they were arrested having expressed a different intent from that expressed at the time of hiring in New York, the cause failed, among other reasons, for the want of the proof of the intent required by the act. *Exempli gratia*: To make the case more intelligible suppose the party which left Philadelphia on the 25th of March, in the charge of Captain Strobel, had, after their arrival within the limits of the southern district of New York, expressed their intent to be to go to Halifax to work on the railroad, and Mr. Strobel, who had, in fact, assisted to engage the men in Philadelphia, had been arrested, and, under the second section of act of 1818, indicted in the southern district, where he happened to be found in

charge with the recruits, and the able prosecuting officer for that district should offer to prove the expressions used by the recruits in Philadelphia as to their intent when arriving in Halifax, the court would hold him to the proof of expressions of intent made in the southern district of New York, where the offense of hiring and engaging is charged to have been committed, and particularly so when the fact is brought to the knowledge of the court that the evidence as to the intent expressed in the two places differ most materially and substantially. Now, this was the case of the United States *vs.* Kazinski, and for this want of sufficient proof of the intent in the district where the trial took place the defendants were acquitted.

[452] *But this case is important for other reasons. It settles two of the fundamental questions which must arise in every prosecution under the second section of this act of Congress.

First. The meaning of the term hiring or retaining, which is to be construed in their every-day acceptation, and is virtually nothing more than "engaging," the word used by the learned judge.

Secondly. That the hiring must be within the district where the crime is charged to have been committed, and I have shown that such hiring, so far as it could be consummated anywhere, was actually done here.

A single word in reply to the remark of Mr. Cuyler, as to the propriety of prosecuting this defendant, while persons of more importance are permitted to pass unpunished. I agree with my learned friend that it is rather unfair in one sense that Mr. Hertz, the mere humble instrument of a great nation, should suffer for the acts of his superiors. But Mr. Hertz was a free agent, and acted voluntarily in the whole affair. He sought for and obtained the position under Mr. Crampton and Mr. Howe, which enabled him to violate our law, and he has no right to complain if he suffers the penalty of his own willful misconduct, and it is the duty of the jury if they believe him guilty so to find him. You will also recollect, gentlemen, that the prosecution of this defendant was the only means by which the Executive of the United States could be best informed of the impropriety of the conduct of those repre-

[453] sentatives of the British govern*ment, who have been accredited as fit and honorable men, claiming peculiar privileges near our Government. I have no doubt that this trial has furnished such information, and that such steps will be adopted as are sanctioned by international law. But with that you have nothing to do here. Your only duty is to impartially inquire into the conduct of Mr. Hertz and Mr. Perkins, and to render a fair verdict under the evidence. With that verdict, whatever it may be, I shall have no complaint to make.

Mr VAN DYKE having concluded, Hon. JOHN K. KANE charged the jury as follows:

I intended, gentlemen of the jury, when we separated, to avail myself of the leisure afforded me to put my charge in writing, but I have been prevented by controlling circumstances from doing so, and my remarks to you, therefore, will be less closely connected, perhaps, though I trust they will not be, on that account, less intelligible and clear.

The case has involved in its progress a train of facts of very considerable political interest, perhaps of more general interest in that aspect of it, than in its bearing on the questions which are to be decided by your verdict. There are very few among us, probably none, who have not felt aggrieved at the tone with which the press of foreign countries, and occasionally of foreign statesmen of the day, have commented upon what they have

[454] been pleased to call over-alacrity of the *American people to engage in military controversies in which they properly had no rightful

part. Our people and our Government have been accused of forgetting the obligations of neutrality, and pushing ourselves forward into the conflict of foreign nations, instead of minding our own business as neutrals and leaving belligerents to fight out their own quarrels. For one I confess that I felt surprised, as this case advanced, to learn that, during the very time that these accusations were fulminated against the American people by the press of England, there was, on the part of eminent British functionaries here, a series of arrangements in progress carefully digested, and combining all sorts of people under almost all sorts of influences, to evade the laws of the United States by which our country sought to enforce its neutrality; arrangements matured, upon a careful inspection of the different sections of our statutes, ingeniously to violate their spirit and principle without incurring their penalty, and thus enlist and send away soldiers from our neutral shores to fight the battles of those who were incontinently and not over-courteously admonishing us to fulfill the duties of neutrality.

I allude to these circumstances and this train of thought, gentlemen, not because it is one that should influence your action as jurors, but because I feel it my duty to guard you against its influence. The question which you have to decide is not whether there has been an effort on the part of any foreign functionary to evade the provisions of our acts of Congress, but whether these two defendants have or have
[455] not vi*olated the provisions of the act of Congress, which are cited in these bills of indictment; your verdict will respond to the simple question, are these two men guilty of the crime with which they are charged?

In order that my remarks may not hereafter be embarrassed by the necessity of using the plural when the singular is more appropriate, I will say to you, at the outset, that there is no evidence against one of these defendants. Before a jury can properly convict an individual of a crime, they must be satisfied, by clear evidence, that the crime has been committed by some one. We have no statute which affects to punish braggart garrulity; and, unless the particular offense of enlisting certain definite persons has been committed by Perkins, one of the defendants, though he may have proclaimed upon the house-tops that he has recruited armies innumerable, no jury can properly convict him of the offense he professes to have engaged in.

I pass to the consideration of the case of the defendant, Hertz. He stands indicted, sometimes jointly with another, sometimes alone, with the offense of having hired and retained certain persons to go out of the United States, for the purpose of enlisting and entering themselves as soldiers in the service of a foreign prince, state, or territory.

The act of Congress is in these words. I read the words material to the question, leaving out those which apply to a different state of circumstances:

> If any person shall, within the territory of the United States, hire or retain
> [456] any person to go beyond the limits of *the United States, with the intent to be enlisted in the service of a foreign prince, he shall be deemed guilty of a high misdemeanor.

The question which you have to pass upon is—did Henry Hertz hire or retain any of the persons named in these bills of indictment to go beyond the limits of the United States, with the intent to be enlisted or entered in the service of a foreign state? Did he hire or retain a person? Whatever he did was within the territory of the United States. The hiring or retaining does not necessarily include the payment of

money on the part of him who hires or retains another. He may hire or retain a person with an agreement that he shall pay wages when the services shall have been performed. The hiring or retaining a servant is not generally by the payment of money in the first instance, but by the promise to pay money when the services shall have been performed; and so a person may be hired or retained to go beyond the limits of the United States, with a certain intent, though he is only to receive his pay after he has gone beyond the limits of the United States with that intent.

Moreover, it is not necessary that the consideration of the hiring shall be money. To give to a person a railroad ticket that cost $4, and board and lodge him for a week, is as good a consideration for the contract of hiring as to pay him the money with which he could buy the railroad ticket and pay for his board himself. If there be

[457] *an engagement on the one side to do the particular thing, to go beyond the limits of the United States with the intent to enlist, and on the other side an engagement, that when the act shall have been done, a consideration shall be paid to the party performing the services, or doing the work, the hiring and retaining are complete.

The meaning of the law, then, is this: that if any person shall engage, hire, retain, or employ another person to go outside of the United States to do that which he could not do if he remained in the United States, viz, to take part in a foreign quarrel; if he hires another to go, knowing that it is his intent to enlist when he arrives out; if he engages him to go because he has such an intent, then the offense is complete within the section. Every resident of the United States has the right to go to Halifax, and there to enlist in any army that he pleases, but it is not lawful for a person to engage another here to go to Halifax for that purpose. It is the hiring of the person to go beyond the United States, that person having the intention to enlist when he arrives out, and that intention known to the party hiring him, and that intention being a portion of the consideration because of which he hires him, that defines the offense.

I believe, that after making this comment upon the law, I might pass on to the fact; but it occurs to me to add, that you are not to require proof of the connection of the defendant with each particular fact and circumstance which has been given in evidence to show the working out of the general plan.

[458] *If you believe the witnesses, the object here was to effectuate an enlistment beyond the borders of the United States, and yet escape from the provisions of this section; to do effectively and yet not seem to do. If you are satisfied, no matter what was the avowed object of the party, no matter what the pretext, if you are satisfied that Henry Hertz was here engaged in hiring and retaining men to go off to Nova Scotia, there to enlist, that being their intention, and he believing that it was so, and therefore hiring them; then, no matter what was the costume or mask which the transaction wore, he has committed the offense charged in the bill of indictment.

As to the evidence, gentlemen, you have listened to it very carefully, and it has been commented upon abundantly. I do not know that it is my duty to detain you by a single remark on it. It is all on one side. Whether it establishes the fact is for you to judge. The enlistment necessarily includes the action of different parties; the concert between them is to be inferred from their acts. The intention of the party engaged or retained to enlist is to be gathered from his conduct and declaration here, from his conduct after he reaches the foreign country, and

from the action of those persons with whom he perfects the enlistment that he may have contracted for here. You are, therefore, while looking primarily at the conduct of Hertz, to look also at the actions of others tending to the same objects; and if you judge that they were actually in concert with him, then all their acts done in pursuance of the common purpose and plan are to be regarded as his.

With these remarks, I leave the case in your hands.

At the conclusion of the judge's charge, the jury retired and returned in about fifteen minutes. On taking their seats, the clerk of the court, in the usual form, put the question, "Gentlemen of the jury, have you concluded upon your verdict?" To which the foreman
[459] re*plied, "We have." Clerk: How say you, guilty, or not guilty?

Foreman: Guilty as to Henry Hertz, in manner and form as he stands indicted on all the bills of indictment; as respects Emanuel C. Perkins, not guilty.

The jury were then discharged. Sentence deferred for the present.

And now, September 29, 1855, Theodore Cuyler, esq., and Stephen Remak, esq., for Mr. Hertz, move for a rule for a new trial, and by leave of court file the following reasons:

UNITED STATES *vs.* HENRY HERTZ. } In the district court of the United States, sur indictment for unlawful enlisting, &c.

1. That the learned judge erred in admitting in evidence proof of the acts and declarations of other persons done and said in the absence of defendant.

2. The learned judge erred in his construction of the language and meaning of the act of Congress, 1818, under which these indictments are framed. That he held, and so instructed the jury, that the words "hire or retain," employed in said act, would be satisfied by less than an absolute contract, founded upon sufficient consideration, and capable of legal enforcement, if the same were not made unlawful by the provisions of said act.

3. The weight of the evidence was clearly and decidedly that no person was "hired or retained to enlist or to leave the United States" with intent to enlist, but the several persons sent to Halifax were engaged to go, and sent there with the distinct understanding that they were there to determine whether they would or would not enlist, and were, until then, entirely free and at liberty, bound by no contract or engagement, and therefore having no intent, &c., within the meaning of the act of Congress.

4. The verdict was against the evidence; and,

5. The verdict was against the law.

THEODORE CUYLER.
STEPHEN S. REMAK.

[460] *And now, October 12, 1855, the motion for a rule for new trial, coming on before Hon. John K. Kane, is argued by Theodore Cuyler, esq., and Stephen S. Remak, esq., for the motion, and the same being denied, and new trial refused,

Mr. Van Dyke said: The motion of the defendant for a new trial being refused, I ask leave to present to this court the confession which has been made to me by the defendant, Henry Hertz.

This prosecution has not been merely local in its tendencies, nor the

influence of its results likely to be confined to the sphere of an ordinary prosecution in this district. Its results are of a far more extended importance.

The disclosures made in the progress of this cause may be the ground work of an important step, on the part of the Federal Government, in relation to those who have been instrumental in producing that system of interference with our affairs which has formed the basis of this prosecution. I am permitted to say that the trial which has just resulted in the conviction of this defendant was authorized by the National Executive, and before making the motion which I intend to submit to your honor, I beg leave to read the instructions which I have received in relation to this trial.

[461] Being aware that the system of enlistments had *been effectually broken up by the prompt execution of the warrants which I had caused to be issued for the arrest of various parties, and by the efficient aid which Mr. Wynkoop, the marshal of this district, and his officers, had otherwise furnished me in ferreting out the system adopted for the evasion of our laws, I had supposed there might not be any urgent necessity in pressing the prosecution of the defendants who have just been tried, and had written to the Attorney-General of the United States, asking whether it was the desire of the Administration further to press these prosecutions; to which I received the answers dated September 13, 1855, and also the letter dated September 17, 1855, both of which I shall take the liberty of reading to the court.

Mr. Van Dyke read the letters as follows:

ATTORNEY-GENERAL'S OFFICE, *September* 12, 1855.

SIR: In reply to your letter of the 10th instant, on the subject of the indictments pending against persons charged with recruiting for the military service of Great Britain, I have the honor to make the following observations:

Mr. McKeon has been advised of the desirableness of conferring with you personally, either by himself or his assistant, in regard to new evidence, to which he may have access, and which can be useful to you.

[462] I suggest the expediency of trying only *a part* *of the cases now, especially if you fail to convict in some leading case.

But the most important consideration is this: This Government has, of course, addressed to that of Great Britain such demands of public redress and satisfaction in the premises as the national honor requires. But the government of Great Britain, with extraordinary inattention to the grave aspect of its acts, namely, the flagrant violation of our sovereign rights involved in them, has supposed it a sufficient justification of what it has done, to reply that it gave instructions to its agents so to proceed as not to infringe our municipal laws; and it quotes the remarks of Judge Kane in support of the idea that it has succeeded in this purpose. It may be so. Judge Kane is an upright and intelligent judge, and will pronounce the law as it is, without fear or favor. But if the British government has, by ingenious contrivances, succeeded in sheltering its agents from conviction as malefactors, it has, in so doing, doubled the magnitude of the national wrong inflicted on the United States.

This Government has done its duty of internal administration in prosecuting the individuals engaged in these acts. If they are acquitted, by reason of a deliberate undertaking of the British government, not only to violate, as a nation, our sov-
[463] ereign rights as a nation, but also to evade our municipal laws—and *that undertaking shall be consummated by its agents in the United States—when all this shall have been judicially ascertained, the President will then have before him the elements of decision, as to what international action it becomes the United States to adopt in so important a matter.

I am, very respectfully,

C. CUSHING.

JAS. C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

ATTORNEY-GENERAL'S OFFICE, *September* 17, 1855.

SIR: I desire to make a further suggestion in regard to the trial of parties charged with recruiting soldiers in the United States for the service of the British government. It is known that instructions on this subject were given by that government

to its officers in the United States. We are told by Lord Clarendon that those officers had "stringent instructions" so to proceed as not to violate the municipal law—that is, to violate its spirit, but not its letter. If so, the instructions themselves violate the sovereign rights of the United States.

But, in the meantime, every consul of Great Britain in the United States is, by the avowal of his government, subject to the just suspicion of breach of law; while, apparently, he must either have disobeyed his own government, or, in obeying it, have abused his consular functions by the violation of his international duty to the United States.

[464] *In these circumstances, it is deemed highly necessary that the British consul at Philadelphia, or any other officer of the British government, shall not be suffered to interfere in the trials, as he attempted to do on a previous occasion; that no letter of his be read, except in the due form of evidence, and that if he have anything to say, he shall be put on the stand by the defense, in order that he may be fully cross-examined by the prosecution.

It is clear that he has no right, by any rule of public law, or of international comity, to be heard in the case by the court, otherwise than as a witness, whether enforced or volunteer.

I have the honor to be, very respectfully,

C. CUSHING.

JAS. C. VAN DYKE, Esq.,
United States Attorney, Philadelphia.

You honor will perceive that the object in this prosecution has been as much to break up the general system which had been adopted by the British government to violate our municipal laws, as it was to punish those who should be found guilty as the instruments of that government.

If the present defendant, since his conviction, has contributed in any manner to aid the Government in this investigation, and that aid has been the result of a sincere regret and repentance for his past conduct, it is, in my opinion, but just that he should have the

[465] *benefit of his present conduct in the sentence which your honor may see fit to pronounce in his case.

I therefore move that the defendant's confession be read, and that it be filed of record among the proceedings in the cause—to be duly considered by the court, in the judgment which may hereafter be pronounced against the defendant.

Per curiam. Let the paper be read and filed of record.

The confession is as follows:

UNITED STATES *vs* HENRY HERTZ.	In the District Court of the United States in and for the Eastern District of Pennsylvania.

UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

Be it remembered, that on this 11th day of October, A. D. 1855, before me, Charles F. Heazlitt, a commissioner of the United States, personally came Henry Hertz, who being duly sworn, says:

That some time in the month of January, 1855, I read in the London Times a notice of the passage of a resolution of the British Parliament, authorizing the enlistment of a foreign legion. A day or two afterwards I went to the United States Hotel, where I heard three or four gentlemen speaking of this country as a place where enlistments could best be made. One gentleman by the name of Miller pointed at me as the man best fit for enlisting men for the British service, because, as he said, I am so well known among the German and foreign population. One of the gentlemen sitting there

[466] arose and said to me, "I am an English officer; *I am not particularly engaged in this matter now, but I can tell you how to embark in it without running any risk, and I would be glad if you would engage in it; but in order to accomplish this, it is necessary for you to go to Washington, and see Mr. Crampton, the English embassador." From what I learned afterwards, the name of the gentleman was Mr. Bruce McDonald. Two or three weeks afterwards I went to Washington, and was introduced by many gentlemen by letters to Mr. Crampton. I had obtained these letters without telling those gentlemen the object of my visit; but before delivering any of these

letters of introduction, I addressed a note to Mr. Crampton, requesting an interview with him; that note did not state the object of the interview. The principal object of my visit to Mr. Crampton was to ascertain whether I could safely embark in this enterprise. I was stopping at Willard's Hotel, and in reply to my note, I received the note hereto annexed, marked A, (C. F. H.) (This note has been published in Mr. Strobel's testimony, and will be found, ante, at top of page 327.) After the receipt of this note I called on Mr. Crampton, at his residence; it was on Sunday morning when I called; I saw Mr. Crampton; he said in substance, "Your letters of introduction assure me that I may have full confidence in you; I have not sufficient authority yet from the home government with regard to the matter, but I expect early authority from Lord Clarendon. I have already received a letter from Lord Clarendon,
[467] inquiring *how many men might be enlisted in this country for British service, and what the United States Government would think of such an attempt. I can tell you this, that if you embark in this matter you can make a great deal of money; if procuring of men for the English service should be undertaken, it will be very advantageous to you; but I expect a letter from Lord Clarendon by the next steamer, which may be expected in eight or ten days, giving me full explanations and instructions how the matter is to be conducted." In this conversation he had a reference to enlistments in this country for the Crimean war. He stated that he had answered Lord Clarendon's first letter, and that the letter he expected was in reply to his answer. He did not state the contents of his answer to Lord Clarendon's letter. He then said, "I have nothing more to tell you to-day, but when I receive Lord Clarendon's letter I will write to you." I returned to Philadelphia, and should have thought nothing more of the subject, but about the 5th of February, 1855, I received a letter from Mr. Crampton, through the post-office, which letter is hereto annexed, marked B. (C. F. H.) (The letter referred to is published ante, second letter on page 329.) I sent him a telegraphic dispatch, that I was too much engaged to come to Washington now, but that I would call upon him at Washington as soon as my time would permit it.
[468] I went some days afterwards, say three or four *days, to Washington and saw Mr. Crampton at his private residence; he was indisposed. I told him I had received his letter and desired to know what I had to do. Mr. Crampton replied, "I have received a letter from Lord Clarendon, which contains the statement that the British government has made arrangements to establish depots at some place in Canada, on the frontier of the United States, in order to receive the men who may be procured in the United States. In pursuance of this information I have sent my special messenger to the governor-general of Canada and to the commanding general of the troops in Canada, (whose name I believe is Roy,) requesting them to designate the places where depots may be established for the reception of persons who may be procured in the United States." I informed Mr. Crampton that I had incurred expenses already by coming twice to Washington, and that I would have to waste more time until the messenger returned, and that I would have to neglect my business; I therefore requested him to refund to me the expenses already incurred by me. Mr. Crampton replied, "I have at present no money at my disposal, and have no authority to give you any, but I am certain you will be paid not only for your services, but that your expenses will be repaid to you." I asked Mr. Crampton what was to be done? How is this matter to be conducted? He said, "As far as I know there is a law in the United States for-
[469] biding the enlisting of *soldiers within the territory of the United States; it is, however, not difficult to evade this law, because, who can prevent you from sending laborers to Canada. But we must take care to do this in such a way that it shall not appear in defiance of the Government.

"My idea is, further, that if you have twenty-five or thirty men together, that either yourself or some confidential person should take them direct by railroad to Montreal, where, I think, a depot may be erected." I then asked him, "When do you think this matter will commence?" Mr. Crampton said, "I cannot say precisely yet, because my messenger will perhaps be prevented from returning to Washington very soon, as the roads are obstructed by ice and snow. It is possible that he will call on you at Philadelphia, on his return from Canada, and will give you the necessary information. In the mean time you may call upon our consul, Mr. Matthews, in Philadelphia, and he, Mr. M., will probably be able to give you the necessary instructions." The conversation with regard to the procuring men was finished, but I reverted again to the law bearing upon the subject. I asked him, "How am I backed in case a charge is
[470] made against me? I have a wife and children." * *Mr. Crampton replied, "First, that the law was exceeding lax; and, secondly, that if anything should happen, the British government would not allow any one to suffer who had been engaged in assisting them in furnishing the men." I replied that "the popular voice is against this matter;" but Mr. Crampton said, "Never mind about this popular voice; if a house in Liverpool fails the whole United States trembles." After Mr. Crampton had given me such assurances, and had used the expression "I give you my word as a gentleman that nothing unpleasant shall happen to you," I then made up my mind to act for the British government. Before I left, Mr. Crampton assured me that he would send a

man to my house in Philadelphia, who would make such arrangements with me as would enable me to procure men, and send them to their destination. I then returned to Philadelphia, and waited ten days, without hearing anything of the matter. I called then on Mr. Matthews, the British consul in this city. Mr. Matthews received me very politely, and informed me that he was just reading a letter from Mr.
[471] Crampton, in which my name is mentioned. He further said, "We (speaking *of his government) are very anxious to procure men; but, alas, we have not received any instructions from Canada as to where the depots are to be erected; however, we expect every day and every hour the return of the messenger." About three, four, or five days after that I visited Mr. Matthews again. He then said to me, "I would advise you to go down to Washington again, for," said he, "although I do not know of any of the particulars of the case, yet I have no doubt Mr. Crampton does and can give you all the information necessary." This was about the 15th of February. I went to Washington again and saw Mr. Crampton, though he was indisposed. All that I could learn from him was that in a week or two he would send a man to my house in Philadelphia. This man, he said, he expected would be sent from the government in Canada to my house, with instructions and means for the recruiting of men in this country. In this conversation Mr. Crampton also stated to me that if I should get into any difficulty I should employ eminent counsel. He also said that, so far as he could ascertain, the Government of the United States would not interfere in the matter. I must distinctly
[472] *aver that, in particular this last statement and representation on the part of Mr. Crampton gave me such full assurance that I did not for one moment think it possible that I could be charged with a misdemeanor or crime. I thought that the matter had been privately arranged between the United States and the English government; Mr. Crampton endeavored to and did leave that impression on my mind. I was led so to believe from what Mr. Crampton said to me. I returned to Philadelphia, and in about a week afterward, on returning home from my office one day, my wife handed me a slip of paper on which was written "Joseph Howe, Jones's Hotel, parlor No. 1." She stated that the gentleman, whose name was on the paper, called and spent with her two hours waiting for me. After dinner, on the same day, I called on Mr. Howe at his hotel and saw him. He asked my name, which I gave him. He said he was extremely glad to see me, as his time for staying in Philadelphia was very limited; that he had to go to New York and Boston, where his agents expected to see him in a few days. I asked him what authority he had for engaging me to enlist men for the foreign
[473] legion? *He answered, "I am authorized by the governor, Sir Gaspard Le Marchant, of Nova Scotia, who, in accordance with instructions from the English government, is the only man who had control of the enlisting service for the foreign legion, and the especial control over the depot in Halifax, established for the men procured in the United States. I told him this is all very well, but I have not the pleasure of knowing the governor. He answered me, "Mr. Crampton has given me your direction, and recommended you as a man in whom I can place full confidence." I answered him "that I would believe anything, but I should like to see some documents from Mr. Crampton." He said, "I am sorry that I cannot show you such at present, as the only document I have received from Mr. Crampton was an introduction to Mr. Matthews, and that letter I have already delivered." I said I would be satisfied if Mr. Matthews would corroborate his statement, and then I would be willing to act on his proposition. He asked me to see him again the next morning at 9 o'clock. I called at 9 o'clock the next day and met there Captain Rumberg, Lieutenant Van Essen.
[474] and another *gentleman by the name of Link, a friend of Mr. Van Essen. Mr. Howe introduced me to those gentlemen, who I knew before, but had never any conversation with them about the recruiting business. He, Mr. Howe, said, "Gentlemen, I suppose you know Mr. Hertz; he is the only confidential agent for the State of Pennsylvania to get men for the foreign legion." I said to him, "I have not got so far yet, and stand upon my demand of yesterday," referring to his statements being corroborated. He said, "that is all right; that gentleman," meaning Mr. Matthews, "knows you already."

This interview was on the 13th March. He said, "I am glad to hear that Mr. Matthews has made all inquiry about your character, and feels fully satisfied." Mr. Howe then said to Mr. Rumberg, "that he would get a colonelship, and Van Essen a captaincy, and told me by all means to send off those men (Mr. Rumberg and Van Essen) with the first transport, in that capacity." I answered, "that if I was satisfied I would do so." He bowed to these gentlemen, and begged to be excused, as he wished particularly to speak with me alone. They went away. Mr. Howe then said,
[475] "I have heard from Mr. Crampton, that you *are a man of limited means; and as means are necessary, he could furnish me with any amount." I told him I wanted £250 to £300 to start with. He answered, "That is only a trifle. You need not be economical, as money was no object at all. I cannot give you more than $300 at present, as I have drafts on different places, which I will put in the hands of one man, and this man would get authority from me to furnish you with the means you want." "That it would be necessary to get men as quick as possible, and for this purpose I

think it would be best to insert some advertisements in the German papers, and in the English papers that are most read by the Irish population, who are Her British Majesty's subjects." I asked him what he meant to insert or advertise—if he thought it proper that I should call for volunteers; he said, "That will not do, but I will write you an advertisement which you may insert immediately, without any risk." He wrote this paper (hereto annexed marked C. C. F. H. This paper is the original proclamation, published, *ante*, on page 326) in my presence, and delivered it into my hands. He also wrote a contract for me to sign, in which I acknowledged my-
[476] self to be a referee for the governor *of Nova Scotia, and was willing to send men. I was to receive $8 for each man sent to Halifax, and extra for each man that was competent to be an officer—£4 extra. And for sergeants I was to receive $4 extra. I did not know at the time that this contract was illegal, and have never received anything for any services I rendered Mr. Howe. Mr. Howe stated in this conversation, in the presence of Rumberg, Van Essen, and Link, that Mr. Crampton had given him the direction of each of us, referring to Rumberg, Van Essen, and myself, as the only persons with whom he was to confer in this city, and that Rumberg and Van Essen have been highly recommended to Mr. Crampton by some French embassador. He then went to his writing-desk, took out $300, and was handing them to me. I told him, "I do not take any money from you." I had so told him once before, as I actually wanted the money through the hands of Mr. Matthews. I was at this time still doubtful whether I should embark in this enterprise, as all I have been stating now was mere conversation; and I had not done anything at all that could make me liable in any shape or form. I desired to test the question whether I
[477] should act or not, think*ing that Mr. Matthews would not play any part in this affair, if it would be against the law of the country, and I therefore asked that the first step be taken by him. Mr. Howe then said, "If I would prefer that Mr. Matthews should give you the money, it should be done so." I answered, that his doing so was a great object to me, as he, Mr. Howe, was only a transient visitor, and could leave the States any time he was disposed, but Mr. Matthews, as a British functionary in this city, would feel himself bound to cover me if anything should happen, or any charge should be made. He said, "I am very glad to hear that you are so cautious, and I will meet your wishes; please call to-morrow morning here, at 9 o'clock, and if I have not left the city, I will take you to the room of Mr. Matthews, in the same hotel, and he will give you the money; but if I have left, go to Mr. Matthews, in his office, and get the money there, if he has not before sent it to your house. I asked him why he staid at Jones's Hotel; he said, as the British consul stopped there, he did so; we shook hands and I went away. In the course of this conversation, Mr. Howe remarked "there is no necessity to be afraid of anything; the laws of the
[478] land here are but poorly enforced, *and £100 might purchase all the laws of the land."

On the morning of the 14th of March I went to Jones's Hotel; Mr. Howe had left, but Mr. Hicks, the book-keeper of Jones's Hotel, handed me an envelope without an inclosure; on the fly or fold of the envelope were written these words: "Go to Mr. Matthews; it is all right." I went to Mr. Matthews's office and saw him there; he told me "he had just sent his clerk up to my residence, 424 North Twelfth street, with $300, which Mr. Howe had requested him to give me, and if I would stay there, or come back again in a quarter of an hour, his clerk would be back, as he wished to have me give a receipt for the money." I remained and conversed about the best plan to begin the matter; Mr. Matthews observed "that he would be glad to assist me in anything, but it must be a secret, as his official standing would not permit him openly to have anything to do in the matter." The clerk returned, when the conversation ceased at a signal given to me by Mr. Matthews. The clerk handed the packet to Mr. Matthews, and Mr. Matthews counted to me $300, and I took the paper (marked D. C. F.
[479] H.) in which the money had been inclosed to me. *The following is a copy of this paper in handwriting of Mr. Matthews:

"Mr. Howe requests the $300 sent may be given to Mr. Hertz, on his receipt in Mr. Howe's name."

He handed me a slip of paper, and asked me "to give him a receipt;" he said, "Be careful to put Mr. Howe's name in it." I wrote the receipt in these words:

"Received, Philadelphia, 14th March, 1855, of Mr. B. Matthews, three hundred dollars, on account of the Hon. Mr. Howe."

Mr. Matthews stated further that "if you want anything for vessels, or means for conveyance, you must go to Mr. Henry Winsor, on the wharf near Pine street, and he will furnish you with anything in his line; that he (Mr. Winsor) had moneys in his hands, or under his control, belonging to Mr. Howe."

I took an office on the 14th of March, and went to the Pennsylvanian and Ledger and inserted the advertisement written by Mr. Howe. The Ledger notice was an abstract, the Pennsylvanian inserted it at length. Mr. Rumberg attended to the advertisements in the Democrat Free Press. On the 16th of March the business
[480] commenced, plenty of men came, and the *first day I had so many that I could

make a transport. I went down to Mr. Winsor and told him I wanted a conveyance for about one hundred to one hundred and forty people to Halifax; he said, there is no possibility to get it from here direct to Halifax, but means are procured to send them from here with his steamers to Boston, and there the regular packets would take them to Halifax; but, at all events, it would not be possible to send such a number before Saturday, the 24th, as the steamer would not go before. I was placed in an unpleasant position, as those men were very poor, and were anxious to start. I was, therefore, necessitated to give them a little money to live. I believe it was the 16th or 17th, in the afternoon, about nine or ten persons, calling themselves English subjects, came to my office; they told me they had just come from the British consul, who had sent them to my office to get tickets, which were left there the same day, in the morning, by T. L. Bucknell. I told them I would give them tickets if they would bring me a written receipt from Mr. Matthews, as I had my instructions to use those tickets with discretion. They went away; in about half an hour after a message was sent from Mr. Winsor wishing to see me. I went down; he presented me a letter

[481] *addressed to him, from Mr. Matthews, in which he desired that Mr. Winsor should get tickets from me, and furnish the people who had called upon me as English subjects with free passage by the schooner Benita, of Halifax, Captain Coffin, then laying at Pine street wharf, and pay the captain $12 for each ticket returned by the captain to Mr. Winsor. I gave Mr. Winsor eight tickets, and he gave me the receipt hereto annexed, (marked E. C. F. H. This receipt will be found, ante, page 416,) and I saw the captain give to Mr. Winsor a receipt for $96, as the captain had returned the eight tickets he had received from Winsor to him, and bound himself to deliver up those men in Halifax, and further to return to Mr. Winsor $12 for each man he should not deliver up at Halifax. The captain took the eight men in his schooner, and sailed with them that evening. The same day I wrote a letter to Mr. Howe asking for funds. Mr. Howe's direction was given me by Mr. Matthews. The following morning I got a telegraphic dispatch directing me to call on Mr. Winsor and get funds. I went to Mr. Winsor and told him I wished $500; he told me that he had an order to pay me $100 only; that Mr. Howe would be here perhaps that day or the day after, and he would

[482] *furnish me with more. At the same time Mr. Winsor told me that the steamer Granite State did not belong to him any more; that he had sold her to another firm, and he did not think the firm would pay a charter for taking passengers; that he did not know, therefore, how he would act to-morrow, as he could not procure any other vessel. I telegraphed directly to Mr. Bucknell asking him what I should do to get conveyance for my "brave people." I did not get any answer. The reason why I telegraphed to Mr. Bucknell was that he was the only man to assist the agents in sending away men. Bucknell told me he was the only man that was authorized by Mr. Howe to assist the agents in sending the men to Halifax, as Mr. Howe himself was very much occupied, and traveling from one place to another.

[483] *To get the people away, I went down to Sandford's line, and made an agreement with Mr. Eldridge to pay him $4 for each man he would take in his steamer to New York, if he could delay the departure of his steamer till Sunday. I wanted to have him to send the men by the steamer Sandford. As Mr. Eldridge did not know me, Mr. Winsor went in and told him that everything that I did he would be responsible for. On the 25th, in the morning, the people were ready to start at 5 or 6 o'clock, but as I had no money to furnish Mr. Strobel, who had command of the party, I went up to Mr. Matthews at Jones's Hotel, in his room, at 5 o'clock, and told him the people were there by the wharf, but Captain Strobel was not willing to start without money, and the poor people wanted to have money in their pockets. He got out of his bed, and got $50, and handed it to me, saying "if that is not enough, I will give you more." I went down to the wharf, and gave $25 to Mr. Strobel, and divided the balance among the men who were going—eighty or ninety people. These people were those I had engaged at my office to go. They went off to New York. I went the same night, the 25th, to New York, and went to Delmonico's hotel, where I found Mr. Bucknell sleeping in Mr. Howe's room. I told Mr. B. that the people either were there, or would come, as they left this morning, and asked how they were to be conveyed to Boston. I also told him that Mr. Strobel would be there and receive his further orders. Mr. Bucknell said that he would make it all right; that I should go to Mr. Barclay, at his private residence, College Place, and he (Bucknell) would soon be there to make further

[484] arrangements. I went away, and returned to Delmonico's in about *an hour. I met there Mr. Strobel, who had arrived; he told me that he wanted money to feed the people; that he was obliged to take them, in four different parties, to four different boarding-houses in Greenwich street. Mr. Bucknell came down, and we went up to his private room, where he told me that he would go with us himself to Mr Barclay, at his office in Barclay street, and that I should go with him. I went with him, and he and Mr. Barclay went into an inner room. Mr. Bucknell then came out, and told me to wait in his private room at Delmonico's, that he would come directly and bring the money. He came and gave me $100, which I delivered in his presence to Mr. Strobel, less $5. I gave him $80 at that time, and had given $15 before, that

morning. We went together to the Astor House, where Mr. Bucknell telegraphed to Mr. Matthews to tell Mr. Cumberland, which means Mr. Howe, not to leave Philadelphia without seeing Mr. Hertz. Mr. Howe, at the time we were in New York, had gone to Washington, and was expected to return in a day or two. I left New York and returned to Philadelphia the same night. Mr. Barclay was the British consul at New York.

On my arrival from New York I went directly from the depot to Jones's Hotel, where I saw Mr. Howe. This was on the 26th of March. Mr. Howe told me he had returned the same morning from Washington, and as he had received a message from Mr. Bucknell, through Mr. Matthews, he had waited here for the purpose of seeing me, as he was very anxious to see me. He had, in the mean time, before my arrival, sent up for Mrs. Hertz to come down and see him, as he was indisposed, but she declined to do so. He told me he had come from Washington, after having a very important interview with Mr. Crampton, and that Mr. Crampton told him that as far as he [425] could observe, the Government of the *United States had begun to feel a little uneasy about this matter; in the mean time that I should go on and care for nothing, as I could be quite sure I would get immediate information in case the United States Government should determine to prosecute the matter. I told him that I was not afraid, as I had the words of such men as Mr. Crampton and Mr. Matthews that nothing should happen to me. He told me that it was 10 o'clock, and he expected to see Mr. Matthews, as he (Mr. Howe) would leave in the midnight train for New York. I told him that I was surprised that he had not sent me any money, as he said I should not be economical with it. He promised to write a note to Mr. Winsor, and all should be made right the next day, but the next day Mr. Winsor told me he had no orders; Mr. Howe had not seen him. Mr. Howe told me to word my dispatches, calling the men barrels or parcels. Mr. Howe also said in this last connection that I could make a large amount of money; that all I had to do was to blow a trumpet in the streets and that I could get thousands for the foreign legion; that Mr. De Korponay was highly recommended as a man of great connection in the West and Texas, and that I should endeavor to see him and furnish him with the necessary means to start, and that as soon as I had sent him (Howe) word that I had engaged Korponay he would send me money.

The next morning I received a telegraphic dispatch from Mr. Bucknell, asking how many parcels I would send, and that I should hurry them along; that there was another company wanting to join the next expedition, so that they should go to Boston together. I answered him immediately that I supposed fifty to sixty barrels would go off by the Sanford to-day; some 47 went off by the Sanford that day; when I came to my office a half an hour afterward I was arrested. On Wednesday, the 28th of March, I was arrested, and on the 29th I went to Mr. Matthews's office, and found Mr. [426] Matthew in a deep conversation with De Korponay. *He left Mr. De Korponay and invited me into the next room, and there said to me, "Do not be downhearted, we will do everything for you in our power; he meant by "we," Crampton, Howe, and himself; he also said "that I should try to give Mr. Howe information of what had happened, and that I should go down to Mr. Winsor and get $200; I went to Mr. Winsor; he told me he had made all right with Mr. Matthews; I went back to Mr. Matthews's, and he (Mr. Matthew) handed the paper marked F. C. F. H., which is now in two parts. This paper Mr. Matthews wrote in my presence. The paper is in the following words: "Please call at Jones's for $200 left with Mr. Sharwood, the proprietor, by Mr. Howe, at 2 o'clock." I went up to Mr. Sharwood, the proprietor of Jones's Hotel, and I received $200 of Mr. Hicks, the book-keeper, to whom I showed this paper. The same day I went down to Moyamensing to see Mr. Budd, who had sent me a message that he had no money. I gave him $5. I told him I could not procure bail for him, as the people did not want to go bail for a native who is engaged in a business of this character. My wife accompanied me on this occasion to the prison. I returned home with her, and there found a letter addressed to me: afterward I went out to take a walk with my wife, and walked down Chestnut street and met the porter of Jones's Hotel—John Allen, I think his name is; he asked me if I had received the letter he had left at my house that day, as the British consul had given strict orders that the letter should be delivered as soon as possible. The letter is hereto annexed, marked G. F. H., and is the letter I found at my house on the occasion referred to by the porter. I have seen Mr. Matthews's handwriting. I know his style of writing, and believe this letter marked G to be in his handwriting. The following is a copy of the letter:

[427] "If the sole name in the warrant and indictment is that of Glenroy, the marshal is indictable for *false arrest of the other parties." The counsel, if such a man as J. Tyler, O'Neall, or Lex, will paint this mean arrest in its true colors; he will prove that the parties interested were solely acting for themselves, with no powerful friend behind them to pay fines, from the sole desire to aid in a war which Europe holds to be the war of liberty; the one a German, the other a Britisher. If they have erred their error is light. Do these pretending republican authorities seek to wreak vengeance on them for loving freedom with England better than Russia?

The counsel's speech should be carefully published, and *will weigh* before a third hearing, which should be obtained.

If, in truth, the British consul had no part in it, the attempt to involve him should be exposed.

It may be easily shown Gilroy is not to be believed on oath. Is he a paid spy and traitor to entrap under false names?

Honorable marshal! Honorable United States district attorney! Honorable men, "Captain Power" and "Lieutenant Sommers!" What is Gilroy's real name? Where *really* born? Not where he says. What his character? What his reward?

[488] Is the German desiring liberty, or the Britisher desiring *to aid his country in a war, to be held as criminal?

What has Russia paid the dominant power for this rigor?

Some of the men who shipped on the morning of the arrest were not taken by the marshal, and went on to New York.

The book marked H is the book in which the names were entered in my office, together with the three sheets of paper marked H, 1, 2, 3. The names in the back of the book were the applicants for commissions.

The tickets produced in court are the tickets I gave to the men. Howe told me that the N. S. R. C. meant Nova Scotia Recruiting Company, but I might translate it Nova Scotia Railroad Company. I had them printed myself. Mr. Howe told me to print them in this way. The white ticket with N. S. R. and J. H. on it are tickets which I obtained from Mr. Howe myself. The J. H. are in his own handwriting. I used only eight of these, which were the eight I gave to Mr. Winsor. Those I used had Mr. Howe's seal on in wax.

On Saturday, before Strobel left, I told Mr. Matthews at that time that the different gentlemen who expected to get a commission were anxious to know what pay they were to receive. He told me he could not exactly tell me, but that I should call on

[489] Doctor Williams, and give him his (Mr. Matthews's) *compliments, and he would give me Hart's Army List, which would give me the necessary information. I got the book from the doctor, but could find nothing about the matter. I told Mr. Matthews of the result, and he said I should correspond with Mr. Howe about it, or, if he should see him first, he would mention it to him. The same night, on my return from New York, Mr. Howe told me he had got all the particulars from Mr. Crampton, so far as he knew it, and handed me the paper marked J. C. F. H.

The paper referred to contains a memoranda, as follows:

"Ensign, 5.4 sterling.
"Lieutenant, 6.8 sterling.
"Captain, 11 and 2 sterling."

This paper states the pay of an ensign, 5*s.* 4*d.* per day; lieutenant, 6*s.* 8*d.*; a captain 11*s.*, and 2*s.* for rations. Mr. Howe said those prices referred to the per diem pay. I believe this paper to be in Mr. Crampton's handwriting.

The handbill marked K. C. F. H. (this is the handbill with the Queen's arms on it, already printed, ante, page 259) is the bill brought me by Mr. Bucknell, together with the white tickets with Howe's seal on them. These bills are the same as those

[490] posted in my office. All these *bills were destroyed in the presence of Mr. Bucknell the next day, together with the tickets he brought me, except the eight I gave to Mr. Winsor. He brought me 900-odd tickets with Mr. Howe's seal on.

When Mr. Bucknell was arrested, Mr. Matthews sent me word by a friend that he would be much obliged to me if I would not call on or correspond with him any more in this case, as he had apprehensions that he was closely watched by the United States officers. The same friend of Mr. Matthews told me it would be best for me to go direct to Halifax. Mr. Bucknell told me the same thing. Before I went to Halifax, I wrote a note to Mr. Matthew. He answered me that he could not do nor would he do anything for me in this case, which he had before directly stated to me, and that I had used some improper remarks against him. I answered him that I was surprised to hear such remarks from him, as I had only said that the functionaries of the British government were perfidious, and I still think so.

I left for Halifax, and had in my possession a letter to Mr. Howe, stating what he ought to do in my behalf. At New York I went to the office of Mr. Barclay and

[491] saw Mr. Stanley, *the vice-consul; he spoke with me about Mr. Howe, and told me that he was sorry that such heedless men as Mr. Howe had brought me and other honest people in a scrape, without assisting us; he also told me that Bucknell was going to Halifax, and that he, Mr. Bucknell, was in the same position as myself. Mr. Stanley told me that Mr. Matthews had paid Mr. Bucknell's expenses, including lawyer's fees, all the expenses he had incurred, and expressed surprise that the same had not been done for me: Mr. Stanley paid my expenses from Halifax. I met, at Mr. Stanley's office, Mr. Jesson, who went from this place with Strobel to Halifax. He told me in Stanley's presence that he, Strobel, and some other officers from Halifax had been sent to the United States, and were now in the United States, and were under the special control of Mr. Crampton, and any money or funds they required would be given them by different

British officials, and the money which he, Jesson, required for enlisting purposes, he had to obtain from Mr. Crampton himself, and that he would go that same night to Mr.
[492] Crampton for that purpose. This was in the first part of June, *about the 7th, long after my arrest; Mr. Jesson said he was at that time going on in the enlistment business, under the direction of Mr. Crampton, and I saw him send fifteen men on that occasion to Boston, via steamboat, to go from thence to Halifax. Mr. Jesson told me he was then on his way to Washington to obtain money from Mr. Crampton for that purpose; that the whole enlisting business was now entirely under the special supervision of Mr. Crampton, who had taken the matter entirely in his own hands. This conversation was in the office of Mr. Stanley, who paid Mr. Jesson some money in my presence to pay for fifteen tickets for the men who were to go off that day.

I went with Mr. Jesson to the steamboat and saw him pay the clerk of the boat for the passage of these men. I saw the men arrive the next day in Boston. They were taken charge of by another English officer named Thune. He boarded them at different boarding-houses, and told me they were to go to Halifax. I took the Cunard
[493] steamer * for Halifax, where I arrived on the 9th. I met Mr. Carstensen at Halifax; we took a cab and drove out to Melville Island. I saw in the barracks most of the people I sent from here; they were equipped and were being drilled. The officer received me with great kindness, and Mr. Van Essen went with me to the city. At supper Mr. Van Essen was called out and did not return. I met Mr. Howe on landing from the steamer; he greeted me very kindly, but said he had no time to see me, and stepped on board the steamer for England; that was the same steamer I arrived in. The next morning, the 10th, I went again to Melville Island to see Mr. Van Essen, who had promised to introduce me to Sir Gaspard Le Marchant. I was received by a man calling himself Major Weis, who told me there were strict orders not to allow me to come to the island again. I asked him to show me the order, for unless I saw it I would not leave the island if he were twenty times major. He had no written order, and I went on the island. He sent immediately to the governor for instructions; in the mean time he ordered the people and officers not to speak with me. In about a half hour the order arrived, and he presented it to me. I told him it was the order of the governor of the province; that I would like to see the order of the military
[494] governor, for with*out it I would not leave. He sent again to the fort, and the commanding English colonel of the forces came himself, and told me that no strangers were permitted to come on the island. I left in company with the colonel, in his calache.

The barracks at Melville Island, where the soldiers are kept, are a parcel of wooden sheds, scarcely equal to those in which a good Pennsylvania farmer keeps his cattle. I then went up to Sir Gaspard Le Marchant, introduced myself, and told what I wished. In the beginning he did not desire to have any connection with me at all, but after I had presented to him, in strong language, the manner in which I had been treated in Philadelphia, as well as in Halifax, he replied it was not his fault, but Mr. Howe's. He also said that Mr. Howe had used $120,000 in the recruiting business, and inasmuch as he had rendered no account of it yet, he could not tell how my account stood; that in the meantime I should give him a written statement of what I wished, and he would answer me the next day. I gave him the statement, and the next day I received the letter marked L. C. F. H. (This letter is already published, and will be found, ante, page 329, dated June 11, 1855.) I left Halifax the next morning. At the time
[495] he delivered the * letter, which was handed to me by Mr. Wilkins, in the presence of Sir Gaspard, he told me that "when you return to New York, go to Mr. Stanley, and that he, Mr. Stanley, will then be able to settle with you." When I arrived at Windsor, I wrote a letter to the governor, Sir Gaspard Le Marchant, in which I repeated all that I had said to him the day before, and told him that when I came to New York, if Mr. Stanley had no orders from him, I would publicly call on Mr. Crampton, Mr. Matthews, &c., and make them account for the inducements held out to me, and through which I was brought into this difficulty. I arrived in New York two days afterward, from Windsor, and called on Mr. Stanley; but, as I had anticipated, he had no orders. Mr. Stanley begged me to be quiet, and not make any noise, and assured me that I should be munificiently compensated for my services for the foreign legion. I went to Howard's Hotel, where I remained some time. While there, an old gentleman came in, asking me to abandon the English side. I said, "I can't do it."

I returned to Philadelphia about the 15th of June, and waited until the 17th for a letter, which Mr. Stanley had promised to write. I did not receive it, and, there-
[496] fore, wrote him a letter, in which I requested him to pay for * my services—I meant the money the government owed me—and which he promised to obtain. I received in reply the letter marked M. C. F. H., hereunto annexed. (This letter is already published and will be found, ante, on page 44, at top of page.)

Previously to my going to Halifax on the 23d of May, I wrote a letter to Mr. Crampton, in which I stated that I had received information that he (Mr. Crampton) and his secretaries, all together, had said that I was in correspondence with the Russian government, for the purpose of betraying their secrets, and if they did not apologize for

making this charge, I would call upon him and the Russian minister to make a statement. To this letter I received the letter hereto annexed, marked N. C. F. H. (This letter is already published and will be found, ante, at middle of page 330.)

All that I did in procuring and sending men to Halifax, for the foreign legion, was done by the advice and recommendation of Mr. Crampton, Mr. Howe, and Mr. Matthews. I was employed by Mr. Howe, and acted as his agent, with the knowledge and approbation of Mr Crampton and Mr. Matthews. Mr. Matthew knew of both the ex-
[497] peditions I sent. He approved and encouraged me in send'ing them away. He encouraged me by his advice and counsel, and in giving me money to send them away.

The statement which I now have made I have made voluntarily, without any inducement, other than the regret I feel in having violated the laws of this country, and the desire which now prompts me to make every reparation in my power, by confessing my own fault, and exposing those who have induced me to enter into this illegal business. I make this statement in the hope that it may have its proper influence upon the Government of the United States, in relation to any future action in the prosecution against me. I have made it, however, without any promise as to such future action, placing myself entirely upon the clemency of those who have the power to act in the premises.

HENRY HERTZ.

In testimony of all which, I hereunto subscribe my name and affix my seal, this 11th day of October, A. D. 1855, and in the eightieth year of the Independence of the said United States.

[SEAL.]

CHARLES F. HEAZLITT,
United States Commissioner.

498] **Mr. Cushing, Attorney-General, to district attorneys.*

[Circular addressed to district attorneys in principal ports of the United States.]

ATTORNEY-GENERAL'S OFFICE,
December 8, 1855.

SIR: Information having been received by the President that preparations are being made in various ports of the United States to recruit men for the invasion of the State of Nicaragua, or otherwise to take part in military operations there, he directs me to call your attention specially to the subject. He desires you to take measures to detect and defeat, so far as it may be lawfully done, all such enterprises, to bring the parties guilty to punishment, and to detain any vessel fitted out to carry on the undertaking.

You will please to give seasonable notice if, in any case, occasion shall arise for the exercise of the direct authority of the President in the premises.

I have the honor to be, very respectfully,

C. CUSHING.

Mr. Cushing, Attorney-General, to Mr. Hallet, United States Attorney, Boston, and Mr. Jewett, United States Attorney, southern Ohio.

ATTORNEY-GENERAL'S OFFICE,
December 8, 1855.

[499] *SIR: I am directed by the President to call your attention to combinations, alleged to exist in your district, for the purpose of military invasion of Ireland.

While it is difficult to believe that such intention is entertained by any persons in the United States, or, if entertained, that it will reach the stage of an overt, illegal act, nevertheless it seems proper that the

subject should have your consideration. The President is, of course, solicitous that no violation of law shall go unrebuked, and especially none which touches our foreign relations, and thus affects the honor and the peace of the whole country. He therefore particularly desires you not to fail to institute criminal proceedings against any persons who shall be found engaged in illegal acts of the character above referred to, or otherwise contrary to our relations of amity with Great Britain.

I have the honor to be, very respectfully,

C. CUSHING.

To B. F. HALLETT, Esq.,
United States Attorney, Boston, and
HUGH Q. JEWETT, Esq.,
United States Attorney, southern Ohio.

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[500] **Mr. Cushing, Attorney-General, to Mr. Inge and Mr. Ord, district attorneys.*

ATTORNEY-GENERAL'S OFFICE,
December 11, 1855.

SIR: I am directed by the President to address you further on the subject of the illegal military enterprises against the State of Nicaragua, which have been and, as it appears, still continue to be carried on from the ports of California. He has perceived with extreme regret that a State with which the United States are at peace, and which on other accounts is entitled to the special good-will of this Government, has thus, in effect, been subjected to invasion.

I am aware of the extreme difficulty of detecting the criminal purpose of any persons engaged in such an undertaking, when they embark without visible organization in passenger steamships plying between San Francisco and San Juan del Sud. But the President expects that, by the exercise of particular vigilance in the matter, you will be able to accomplish the desired object.

Suggestion has been made of some complicity of the Nicaragua Transit Company in these acts, and that point may be entitled to your consideration.

I am, very respectfully,

C. CUSHING.

Hon. S. W. INGE,
Attorney United States, San Francisco, California.
PACIFICUS ORD, Esq.,
United States Attorney, Monterey.

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[501] **Mr. Cushing, Attorney-General, to Mr. Van Dyke, district attorney*

ATTORNEY-GENERAL'S OFFICE,
December 12, 1855.

SIR: I had the honor to confer with you personally several weeks since, regarding representations made by the British minister as to alleged combinations on the part of certain persons in the United States to organize an expedition for the military invasion of Ireland, and to

request your special attention to the subject, so as to prevent or punish any infringement of our relations of amity with Great Britain.

In consequence of a meeting, purporting to have some such object, which has recently occurred in New York, the President directs me again to invite you to vigilance on the subject. While it is difficult to believe that such intention is entertained by any persons in the United States, or, if entertained, that it will reach the stage of an overt illegal act, nevertheless it seems proper that the subject should have your consideration. The President is, of course, solicitous that no violation of law shall go unrebuked, and especially none which touches our foreign relations and thus affects the honor and the peace of the whole country. He, therefore, particularly desires you not to fail to institute criminal proceedings against any person who shall be found engaged in illegal acts of the character above referred to, or otherwise, contrary to our obligations of friendship to Great Britain.

[502] *I have the honor to be, very respectfully,

C. CUSHING.

JAMES C. VAN DYKE,
United States District Attorney.

Mr. Van Dyke, district attorney, to Mr. Cushing, Attorney-General.

OFFICE OF THE ATTORNEY OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA,
140 *Walnut street, Philadelphia, December* 14, 1855.

SIR: Your communication of the 12th instant, in relation to a meeting recently held in the city of New York, supposed to be for the purpose of organizing an expedition for the military invasion of Ireland, and inviting vigilance in the suppression of any infringement of our relations of amity with Great Britain, is this day received.

In compliance with your suggestions, I shall direct my attention to the matter, and also request the marshal of this district to use his best means to ferret out the truth in relation to the organization to which you refer.

I am sir, very respectfully, your obedient servant,

JAMES C. VAN DYKE.

Hon. C. CUSHING,
Attorney-General.

Mr. McCoy, district attorney, to Mr. Cushing, Attorney-General.

OFFICE UNITED STATES ATTORNEY,
EASTERN DISTRICT LOUISIANA,
December 18, 1855.

SIR: I have this day sent to the collector of this port the original of the accompanying copy. I trust that its tone will meet the requirements embraced in your communication of the 8th instant.

I am, dear sir, yours, &c.,

THOMAS S. McCOY,
[503] *United States Attorney.*

Hon. C. CUSHING,
Attorney-General.

[Inclosure.]

Mr. McCoy, district attorney, to Colonel Porter, collector, New Orleans.

UNITED STATES ATTORNEY'S OFFICE,
EASTERN DISTRICT LOUISIANA,
December 17, 1855.

SIR: I have been informed that preparations are being made in and about New Orleans for the invasion of Nicaragua; that a considerable body of men have been recruited here, and are on the eve of departure to take part in the military operations of that partially revolutionized government.

As far as it may be lawfully done, you will detain any vessel now in this port fitted out to carry on the undertaking; and I particularly request that you will detail a special number of inspectors to search and watch the General Scott, now on the eve of departure, and report to this office the result of your investigation.

I am, sir, your friend,

TOM S. MCCOY,
United States Attorney.

Colonel J. C. PORTER,
Collector, New Orleans.

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[504] **The President to Mr. McCoy, district attorney.*

EXECUTIVE MANSION, *December* 26, 1855.

THOMAS S. MCCOY, Esq.,
United States District Attorney, New Orleans, Louisiana:

Your letter of the 18th instant, addressed to the Attorney-General, has been submitted to me. Your call upon the collector is fully approved. Continue to act in the premises with the utmost energy and vigilance. You are hereby empowered to exercise all such authority in this relation over the public force as the President may lawfully delegate by virtue of the eighth section of the act of Congress of April 20, 1818.

FRANKLIN PIERCE.

Mr. Cushing, Attorney-General, to Mr. McKeon, district attorney.

ATTORNEY-GENERAL'S OFFICE,
December 24, 1855.

SIR: I duly received your communication of the 23d instant, and the documents accompanying the same, having reference to the engagement and preparation of persons in the State of New York for military service in the state of Nicaragua. You will have received my dispatch by telegraph notifying you of the order given by the President to Captain Bigelow, of the United States Navy, to proceed according to your advice in the detention of any vessel whatsoever implicated in proceedings contrary either to statute or to treaty stipulations, and desiring you to act in the premises upon all proper information. This applies more especially, of course, to the steamer Northern Light.

If there shall have been occasion to act on the brief order sent

[505] to Captain Bigelow by telegraph, or *there should be good reason to suppose that there will be occasion so to do in the sequel, orders to the same effect and in more complete form will be transmitted by mail.

I have the honor to be, &c.,

C. CUSHING.

Hon. JOHN MCKEON,
United States District Attorney, New York.

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[506] **Mr. McKeon, district attorney, to Mr. Cushing, Attorney-General.*

SOUTHERN DISTRICT OF NEW YORK,
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
December 26, 1855.

SIR: A warrant has been issued by George W. Morton, esq., United States commissioner, against Parker H. French, charged with an offense against the laws of the United States, recently committed. Mr. French claims to be a diplomatic representative of the state of Nicaragua, and the offense charged against him was committed by him since assuming such character. I have to request to be informed of the President's directions as to whether said warrant should be executed.

I am, with high respect, &c.,

JOHN MCKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney-General.

Mr. Cushing, Attorney-General, to Mr. McKeon, district attorney.

ATTORNEY-GENERAL'S OFFICE,
December 27, 1855.

SIR: I have received your letter of the 26th instant, in which you state that a warrant has been issued against Parker H. French, claiming to be a diplomatic representative of the state of Nicaragua, for an offense against the laws of the United States, charged to have been committed by said French recently, and since he assumed such character, and
[507] as to which you request to be informed whether *the said warrant shall be executed. In reply, the President directs me, in the first place, to refer you to the following paragraphs of my letter of the 24th instant, viz:

> You will perceive that Mr. French is entitled to diplomatic privileges in the United States only in a very qualified degree. He is not an accredited minister, but simply a person coming to this country to present himself as such, and not received, by reason of its failing to appear that he represents any lawful government. Under such circumstances any diplomatic privilege accorded to him is of mere transit, and of courtesy, not of right, and that courtesy will be withdrawn from him so soon as there shall be cause to believe that he is engaged in here, or contemplates, any act not consistent with the laws, the peace, or the public honor of the United States.

He directs me to say, in the second place, that proceeding in the spirit of the fullest consideration for the diplomatic character, he desires you to notify Mr. French of the present charges, and to inform him that no process in behalf of the United States will be served upon him, pro-

vided he shall not become chargeable with any further offense, and shall depart from the country within a reasonable time.

I have the honor to be, &c.,

C. CUSHING.

Hon. JOHN MCKEON,
United States District Attorney.

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[508] **Mr. Addison, district attorney, to Mr. Cushing, Attorney-General.*

OFFICE OF UNITED STATES ATTORNEY,
Baltimore, December 28, 1855.

SIR: Immediately on receiving your letter of the 8th instant, I took measures to ascertain if any preparations were being made in this district to recruit men to take part in military operations in Nicaragua, and became entirely satisfied there were none.

I shall continue to exercise all my vigilance to detect and defeat the expedition, should one be organized.

I am, sir, your most obedient humble servant,

WILLIAM MEADE ADDISON.

Hon. C. CUSHING,
Attorney-General.

Mr. Pierce, President, to Captain Bigelow, United States navy-yard.

EXECUTIVE MANSION, *January* 9, 1856.

Captain ABRAM BIGELOW,
United States Navy-Yard, Brooklyn, New York:

Arrest and detain any vessel in the port of New York charged with violation of neutrality laws, upon advice of the district attorney, Hon. John McKeon.

FRANKLIN PIERCE.

The original received, of which the above is a copy.

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[509] **Mr. Joachinson, acting district attorney, to Mr. Cushing, Attorney-General.*

SOUTHERN DISTRICT OF NEW YORK,
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
January 9, 1856—4 p. m.

SIR: I have the honor to report to you that I have just returned from the Star of the West. The President's authority was respected. Four arrests were made. The ship not having anything otherwise unlawful, I permitted her to depart. I will give a detailed report to-morrow.

I remain, with great respect,

P. J. JOACHINSON,
Acting United States District Attorney.

Hon. CALEB CUSHING,
Attorney-General.

Mr. Cushing, Attorney-General, to Mr. Cannon, district attorney.

ATTORNEY-GENERAL'S OFFICE, *January* 14, 1856.

SIR: I am directed by the President to call your attention to the statement in the Trenton Gazette of the 10th, reproduced in the New York Herald of the 12th, to the effect that a military expedition, in violation of law, is fitting out by parties in New Jersey, and to request that you will take steps to inquire into the same, and, if the statement
[510] be true, to arrest *and prosecute the offenders.

I am, very respectfully,

C. CUSHING.

G. S. CANNON,
United States Attorney, New Jersey.

Mr. Cannon, district attorney, to Mr. Cushing, Attorney-General.

BORDENTOWN, *January* 16, 1856.

SIR: I acknowledge the receipt of your letter of the 14th instant, directing my attention to certain publications in relation to the rumored fitting out of a military expedition, by parties in this State, in violation of law.

I will proceed at once to institute a rigid inquiry in relation to this matter, and if I find that the rumors are well founded, will immediately take measures to arrest and prosecute the offenders.

I am, very respectfully, your obedient servant,

G. S. CANNON,
District Attorney, &c.

Hon. CALEB CUSHING,
Attorney-General United States.

Mr. McKeon, district attorney, to Mr. Cushing, Attorney-General.

SOUTHERN DISTRICT OF NEW YORK,
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
New York, January 16, 1856.

SIR: Yesterday the grand jury of the circuit court of the United States for the southern district of New York presented an in-
[511] dictment for setting on foot a *military expedition or enterprise against the government of Nicaragua, against the following-named persons: John Creighton, Francis B. O'Keefe, Andrew J. Morrison, Charles Waters, William Lyster, Parker H. French, Daniel H. Dillingham, Joseph R. Mali, George B. Hall, Addison Farnsworth, and Louis Schlesinger.

With great respect, I am, sir, your obedient servant,

JOHN MCKEON,
United States District Attorney.

Hon. CALEB CUSHING,
Attorney-General, &c.

Mr. McKeon, district attorney, to Mr. Cushing, Attorney-General.

SOUTHERN DISTRICT OF NEW YORK,
New York, January 16, 1856.

SIR: I have been informed that Captain Faunce and his officers, of the revenue-cutter Washington, have been ordered to leave this port to cruise on the coast. His vessel is deemed by me very important as an aid to me in carrying out the neutrality laws. Her appearance here is of the highest moment at the present time. Moreover, these officers may be required as witnesses in the cases which have arisen out of the detention of the Northern Light, and it is proper that the officers of the cutter should be in such a position that I may call on them to
[512] attend court *at any moment.

May I ask you to desire the Secretary of the Treasury to give such directions in the matter as will secure the object I have in view?

I am, sir, very respectfully, your obedient servant,

JOHN McKEON.

Hon. CALEB CUSHING,
Attorney-General.

Mr. Cushing, Attorney-General, to Mr. McKeon, district attorney.

ATTORNEY-GENERAL'S OFFICE,
January 19, 1856.

SIR: I have the honor to acknowledge the receipt of your communication of the 16th instant, in relation to the retention of the revenue-cutter Washington at the port of New York, and have submitted the same to the Secretary of the Treasury. I am informed by him that he has countermanded the orders requiring the Washington to leave New York on a cruise, and directed her to remain there.

I am, very respectfully,

C. CUSHING.

JOHN McKEON,
United States District Attorney.

Mr. Ord, district attorney, to Mr. Cushing, Attorney-General.

OFFICE OF THE ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA,
Los Angeles, February 16, 1856.

[513] SIR: I have had the honor to receive your letter of the *10th of December last, calling my special attention, by direction of the President, to the subject of the preparations being made in various ports of the United States to recruit men for the invasion of the state of Nicaragua, or otherwise taking part in military operations there, and desiring me to take measures to detect and defeat all such enterprises, and to bring the parties guilty to punishment, and to give seasonable notice if in any case occasion should arise for the exercise of the direct authority of the President.

I shall use all due diligence to carry out the instructions of the President in the premises.

Your obedient servant,

P. ORD,
District Attorney.

Hon. CALEB CUSHING,
Attorney-General United States.

Mr. Ord, district attorney, to Mr. Cushing, Attorney-General.

OFFICE OF THE ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA,
Los Angeles, February 16, 1856.

SIR: I have had the honor to receive your letter of the 14th of December, 1855, on the subject of illegal military enterprises against the state of Nicaragua originating in California.

I shall use every effort to carry out the directions and wishes of
[514] the President in regard to these illegal *enterprises.

Up to the present time I am very confident that no vessels have been fitted or men organized within the southern judicial district of California, nor have any of its citizens embarked in such illegal enterprises.

I am, very respectfully, your obedient servant,

P. ORD,
District Attorney.

Hon. CALEB CUSHING,
Attorney-General United States, Washington.

Mr. Cushing, Attorney-General, to Mr. Inge, district attorney.

ATTORNEY-GENERAL'S OFFICE,
March 1, 1856.

SIR: Referring to my letters of January 16, 1854, and of December 14, 1855, I have to request of you a brief report of the several prosecutions which have been instituted in your district for imputed violation of the provisions of the act of Congress referred to.

I am, very respectfully,

C. CUSHING.

Hon. S. W. INGE,
Attorney of the United States, San Francisco.

Mr. Inge, district attorney, to Mr. Cushing, Attorney-General.

SAN FRANCISCO, *April* 1, 1856.

[515] SIR: I have received your letter of the 1st ultimo, requesting *a brief report of the several prosecutions which have been instituted in the northern district of California for violation of the act of 1818.

In reply, I have the honor to state that the first prosecution was instituted in 1853, against one Henry P. Watkins, who organized a force

in San Francisco for the aid of Walker in his attempted conquest of Lower California. This prosecution resulted in the conviction of Watkins.

Subsequently, Frederick Emmons, who was a confederate of Watkins in the expedition before referred to, plead guilty to an indictment founded upon the same section of the said law.

Afterwards, in the year 1854, the consuls of Mexico and France were indicted for violation of the section of the act of 1818 prohibiting the enlistments of men within the territory of the United States for service in a foreign country, the first of whom was convicted.

In the case of the consul of France there was a mistrial, the jury standing, upon their discharge, one-third for conviction and two-thirds for acquittal.

I have the honor to be, sir, very respectfully, your obedient servant,

S. W. INGE.

Hon. CALEB CUSHING,
Attorney-General of the United States.

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[516] **Mr. McCoy, district attorney, to Mr. Cushing, Attorney-General.*

OFFICE UNITED STATES ATTORNEY,
EASTERN DISTRICT OF LOUISIANA, *April* 9, 1856.

SIR: This morning I have given peremptory instructions to the marshal of this district to search the Charles Morgan, a steamship advertised to leave this port to-morrow morning for Nicaragua, and report to this office by 5 o'clock p. m., and at 8 o'clock a. m. to-morrow, the 10th, the result of his investigation.

The object of these instructions, so peremptory, is to carry out your instructions of date 8th of December, 1855, and to maintain the integrity of the act of Congress of 1818 and our treaty stipulations with Great Britain.

The report, should it be made, will be immediately forwarded to your Department.

I am yours, truly,

T. S. McCOY.

Hon. CALEB CUSHING,
Attorney-General United States, Washington, D. C.

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[517] **Mr. McCoy, district attorney, to Mr. Cushing, Attorney-General.*

UNITED STATES ATTORNEY'S OFFICE,
EASTERN DISTRICT OF LOUISIANA, *April* 10, 1856.

SIR: In obedience to my instructions to the marshal of this district, of yesterday's date, of which I informed you, the steamship Charles Morgan, bound for San Juan, was searched last evening and this morning within one hour of departure. The marshal has just reported no violation of law discovered.

I am, sir, very truly yours,

T. S. McCOY,
United States Attorney.

Hon. CALEB CUSHING,
Attorney-General of the United States.

Charge of Judge Wilson to the grand jury of the circuit court for the southern district of Ohio.

[Extract.]

If I am correctly informed, gentlemen, these statutes to which I have directed your attention comprise all that you will have occasion to examine attentively, unless you become satisfied that the neutrality law of 1818 has been violated in this district. Should complaints come before you for the breach of this law, I would ask your especial examination of the first and second sections of the act. It is known as the "Act in addition to an act for the punishment of certain crimes against the United States," approved April 20, 1818.

[518] *It is now an acknowledged fact, and one that will constitute a part of the history of our times, that within the last fourteen months a foreign power has through its ministers, consuls, and other agents in the United States, been engaged, in violation of positive law, in enlisting troops for a war upon a nation with which our Government is at peace. After what has so recently transpired in the cities on our Atlantic sea-board, and a sister city of our own State, the Federal courts and grand juries would prove derelict of duty to shut their eyes upon these flagrant violations of law.

In the war which is now being carried on in Europe the United States occupies the position of a neutral power. The rights of neutrality bring with them corresponding duties; among these duties is that of impartiality between the contending parties. By the law of nations the neutral is the common friend of both parties; consequently is not at liberty to favor one to the detriment of the other; and this impartiality permits the neutral nation to give no assistance, (when there is no previous stipulation to give it,) nor voluntarily to furnish troops, or arms, or anything of a direct use in war. No nation, either ancient or modern, has adhered more steadfastly to these rules governing neutrals than that of Great Britain.

[519] *At the commencement of the war between France and England, in 1793, an attempt was made by France to violate the neutrality of the United States by arming and equipping vessels and enlisting men within our ports to cruise against the shipping and merchant marine of England. Great Britain, conscious of the kind and sympathetic feeling then existing between the citizens of this country and France, became alarmed, and protested with arguments of great force to the claims made on this country by the French minister, M. Genet, in behalf of his government. And those of you, gentlemen, who retain fresh in your minds the history of those times, or who are at all familiar with the American state papers, will not fail to remember with what ability and wisdom Mr. Jefferson, then Secretary of State under President Washington, defined the neutral policy of the United States. This policy was in accordance with the then expressed views of the British government, and resulted in the unqualified denial to France of her demands. Accordingly the American Congress, in 1794, passed an act embracing this policy, which act was revised and re-enacted in 1818, and this is the statute to which I have specially called your attention. This law having originally passed under the auspices of Washington, thus recognized at an early date in this country,

[520] not only the obligations of neutrality, *but the duty of the Government to enforce them.

The English government certainly cannot plead ignorance of this policy or complain of American legislation upon this subject, for, not

content with what her great lawyers and statesmen had for more than a century claimed to be a well-established matter of international law, the British Parliament, in 1819, passed what is called "the enlistment act," which is substantially a copy of the act of the American Congress of 1818.

If ever there is anything which will justify a sensitive and uneasy feeling in the people of the United States, it is when their laws are put at defiance and trampled under foot by the sanction of a foreign government. Neither will they recognize or admit of any palliation for this course of conduct on the part of the offending government or its citizens, on the ground of necessity, or that the belligerents in a foreign war, on the one side or on the other, have a just or an unjust cause. With the *morale* of this European controversy we have nothing to do, and whether it would be better for mankind that the standard of the crescent should be upheld by the armies of Christendom in the Ottoman Empire, or whether it should be supplanted by that of the cross, is a matter not to be considered by American courts and juries in administering the laws of the United States. It is unnecessary that I should make further comment upon the provisions of this act of 1818, or the cause which led to its passage. I am confident that in relation to this, as in all duties imposed on you as grand jurors, you will act fearlessly and faithfully, and as men fully impressed with the importance of maintaining the sovereignty of the laws.

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[521] **Attorney-General Cushing to the President.*

ATTORNEY-GENERAL'S OFFICE,
May 27, 1856.

SIR: I deem it incumbent on me to bring to your notice sundry passages in official communications of the British minister, Mr. Crampton, to his government, as they appear in the "papers relative to recruiting in the United States," recently presented to Parliament, which contain palpable errors of statement touching me personally or my official action as Attorney-General.

1. In a letter to the Earl of Clarendon, of the 19th of November, 1855, in commenting on Mr. Marcy's letter to Mr. Buchanan, of the 15th of July, 1855, Mr. Crampton assumes that the British consuls, implicated in illegal enlistments in the United States, were prevented, by the tenor of my instructions to the district attorney of Philadelphia, from testifying to their alleged innocence. (Papers *ut supra*, p. 128.) That statement is not true.

The district attorney was instructed to object to any attempt of the British consul to do what he had undertaken on a previous occasion to do, that is, to interfere in the trials by officious letters, written for the purpose; but, instead of being forbidden, it was expressly suggested that he should appear as a witness.

[522] *It is obvious that it cannot be admitted that a person, who deems himself inculpated by judicial proceedings, be allowed to interpose in the trial by mere letters of denial or *ex parte* explanation. He has no right, in law or courtesy, to any such privilege. If he desires to be heard, he must appear in a legal manner, that is to say, as a witness, in order that he may be examined so as to elicit the truth.

The British consul at Philadelphia might have volunteered as a wit-

ness in the case of Hertz, if he had seen fit. He ought to have done so, if his testimony, lawfully given, could have proved anything material, either to the prosecution or the defense.

There was nothing extraordinary in this particular matter, except the presumption of a foreign consul in supposing that he might interfere by volunteer letters, to affect the course of criminal justice in the United States.

2. In Mr. Crampton's letter to the Earl of Clarendon, of November 27, 1855, it is alleged that the proceedings against Hertz and others, in Philadelphia, were instituted, not against the persons who were ostensibly arraigned, but against the British diplomatic and consular
[523] *agents in the United States. (*Ubi supra*, p. 134.)

That is incorrect. The proceedings were commenced in March, 1855, when no suspicion was entertained by this Government of the relation of Mr. Crampton and of British consuls to the illegal acts in question. It is true, however, that among the objects expected from and accomplished by the trial, was the legal ascertainment of facts alike important to the British government and that of the United States.

3. In these same letters Mr. Crampton says that, at the time of the trial referred to, (September 21, 1855,) "the United States Government must have known that all recruitment, legal or illegal, had been put a stop to several weeks before." (*Ubi supra*, p. 134.)

That is a mistake. This Government knew nothing on that point, at that time, except what Lord Clarendon had said in his letter to Mr. Buchanan of July 16, 1855, namely, that the British government had sent orders to put an end to "all proceedings for enlistment."

Lord Clarendon did not mention when the orders were sent; nor does the context of his letter show whether the orders spoken of applied to the United States only, or also to British America. At what time
[524] those orders took effect, *to whom sent, and their exact scope, did not then appear of public notoriety, and was never communicated to this Government.

This Government well knew that recruitments took place in August; it did not know that they had ceased in August. So soon as it had satisfactory information of their cessation, instructions were given to desist from all further judicial proceedings, except against official agents of the British government. (Letter of the Attorney-General to Mr McKeon, of October 20, 1855, *ubi supra*, p. 129.)

4. In the same letter Mr. Crampton says that the United States Government must have known that the proceedings of Hertz were, from the moment he attempted to enter upon a system of recruitment, disavowed by Her Majesty's officers." (*Ubi supra*, p. 136.)

This is not so. This Government knew the contrary of what is thus alleged. It knew that Mr. Crampton had corresponded with Hertz. (*Ubi supra*, p. 67.) It also knew that Hertz was officially employed and paid by Mr. Howe, as the latter has since declared on oath. (*Ubi supra*, p. 218.)

5. In his letter to the Earl of Clarendon, of March 3, 1856, Mr.
[525] Crampton assumes that he *and the inculpated consuls were the real parties defendant, and then proceeds to argue on the further assumption that they were prohibited from appearing in their own defense. (*Ut supra*, p. 178.)

I have already commented upon and corrected the error of fact involved in these assumptions, in so far as regards the consul.

As to Mr. Crampton, he also could have offered his testimony if he

had pleased. If he suggest that considerations of diplomatic dignity would prevent this, the reply is, that considerations of diplomatic dignity should have prevented his engaging in association with persons, now said by him to be of equivocal character, in the systematic violation or evasion, for a period of nearly six months, of the municipal law of the United States.

He well knew in April that persons, in the actual pay of his government, were under prosecution in Boston, New York, and Philadelphia, and should then have anticipated that his name would eventually come in question before the courts of justice, all the personal annoyance and other inconveniences of which he encountered voluntarily, and with no right now to complain of the consequences.

[526] *For the rest, the law of nations, it is true, exempts Mr. Crampton from trial for misdemeanor; but it is idle for him to suppose that his hired agents in the commission of the misdemeanor, who are not themselves invested with diplomatic privilege, were to have it accorded to them otherwise, or that his participation in the acts perpetrated should not come under observation in a court of justice without his being able to appear directly as defendant on the record.

6. In the same letter Mr. Crampton repeats the erroneous statement that "the consuls were not allowed to be heard on the trial of Hertz." (*Ut supra*, p. 179.)

I have already remarked on this point. I add, that on the trial of Wagner in New York, pains were taken to obtain the evidence of the active official agent of enlisting there, Consul Barclay's deputy, Mr. Stanley, but without success.

7. In the same letter Mr. Crampton reproaches the "law-officers of the United States" for resorting to the aid of "spies and informers" for the proof of facts. (*Ut supra*, p. 179.)

Those are designations of mere prejudice applied by Mr. Crampton to his own paid agents and accomplices in the violation of the laws
[527] of the United States. *It is a very strange complaint to make against the "law-officers of the United States."

Crimes are not to go unpunished merely because the only attainable witnesses of the crime were accomplices in its commission. If such evidence were excluded, it would be impossible to administer penal law. Its employment belongs to the ordinary course of law in Great Britain, as well as in the United States.

The complaint is the more groundless in this case, since the offense which the parties had committed, and in the commission of which they acted under orders and with pay, proceeding in the first instance from the British ministers, was not of a nature to affect the credibility of the parties as witnesses. Notwithstanding their participation in illegal recruiting, they were competent and credible witnesses, morally, and also by the rigorous rules of law.

I omit all remarks on the captious commentary which Mr. Crampton makes in the same letter respecting the judicial proceedings in the trial of Hertz. That is diplomatic matter. My present object is only to speak of those passages in Mr. Crampton's dispatches in which he attacks the Executive Government by reflections on the Attorney-General.

[528] *8. In the same letter Mr. Crampton criticises a remark made in Mr. Marcy's letter to Mr. Buchanan of the 28th of December, to the effect that whoever entices away the subjects of another state for military purposes, and without its consent, violates its sovereign rights; and he founds the criticism upon the assumed authority of the original

text of two writers on the law of nations, who are cited by Mr. Marcy, namely, Christian de Wolff and Vattel.

As the same authors, and to the same effect, have in another document been cited by me, it may not be improper for me here to say that the error in this matter is on the part of Mr. Crampton. He assumes that the word "*debaucher*," in Vattel, is incorrectly rendered in the received English translation, "entice away," and alleges that the idea intended is "kidnaping," which he infers from the use by Vattel, in the context, of the word "*plagiat*" with equivalent sense, and as the corresponding Latin word "*plagium*" is used by Wolff.

What Mr. Crampton impliedly asserts in this criticism is, that though it may be contrary to the law of nations to enter the territory of a foreign government and seize recruits there by force, yet that it is
[529] lawful to enter that *territory and entice them into foreign military service, without the consent of the state, provided it be done by pecuniary or other inducements.

The misconception of Mr. Crampton in this respect becomes manifest by reference to the text of Wolff, which is copied and abridged, and thus rendered obscure, by Vattel.

It is perfectly clear that Wolff intends by the word "*plagium*" to cover all the possible means of obtaining recruits in a foreign country without consent, and especially enticement, because, in the passage in which he defines "*plagium*" and gives illustrative examples, he expressly includes acts of mere persuasion or enticement, and also includes reference to such enticement in contravention of the authority of the state.

Mr. Crampton's error in this respect would have been avoided if he had read and quoted the *whole* of the material passage in Wolff.—(*Jus Gentium*, sections 785, 756.)

But the most important error of fact which Mr. Crampton commits in this correspondence, relates to the order of the British government for the cessation of recruiting in the United States.

[530] *In a letter to Lord Clarendon of March 3, 1856, he says:

> A new charge is now brought up against us, which is not alluded to in Mr. Marcy's dispatch of December 28, to the effect that, though we promised to stop the recruitment by your note of July 16, we still continued it. I can disprove this by documentary testimony.—(Papers, *ut supra*, p. 212.)

In a letter to Sir Gaspard Le Marchant of January 13, 1856, Mr. Crampton writes:

> There is one story which I want your assistance in demolishing.
>
> I know the assertion to be false, but I wish to have it under your hand that it is so, as far as you are concerned.
>
> Mr. Cushing openly asserts that he knows, and can prove, that we—you and I—went on with the recruitment long after Lord Clarendon said we had been ordered to stop it.
>
> Now, how are the facts? Lord Clarendon announced this to Mr. Buchanan in a note dated the 16th of July, a copy of which I received somewhere about the 2d of August. I immediately telegraphed to Lieutenant Preston to break up his station at Niagara, and not receive another man. I know he obeyed. People who were
> [531] ready to start *from New York were stopped. I also lost no time in communicating with you, in case you should not have heard from home.
>
> As there were no other places where recruits could be received but Niagara and Halifax, all we want is the dates at which the last man was received from the United States.—(*Ut supra*, p. 232.)

Here is exquisite confusion of thought and of statement.

It is immaterial to inquire whether I ever asserted anything of the nature imputed. Certain it is that I can prove it, by the testimony of two competent witnesses, Mr. Crampton and Sir Gaspard Le Marchant.

The statement imputed to me is, that the recruitment went on "long

after Lord Clarendon said we (Mr. Crampton and Sir Gaspard Le Marchant) had been ordered to stop it."

Mr. Crampton expressly refers, in his letter to Sir Gaspard, to Lord Clarendon's letter to Mr. Buchanan of the 16th of July. I *suppose* he alludes to that in the phrase quoted, "Lord Clarendon said *we* had been ordered." But Lord Clarendon does not say that. He says, "Instructions to that effect were sent out," but does not say when they were sent, nor that they were sent to Mr. Crampton and Sir Gaspard Le Marchant.

532] *Nothing particular was known by me in January, 1856, of those orders, nor to whom they were sent. Of course, I did not speak of them as having been addressed to Mr. Crampton and Sir Gaspard.

No direct official knowledge of them came under my eye until they were referred to in Lord Clarendon's recent letter to Mr. Dallas, in which it is stated that the British government "sent out to *Canada and to Nova Scotia*, on the 22d of June, 1855, orders to discontinue all further proceedings in the matter of enlistment for the foreign legion." But here, again, it is not said that orders on the subject were sent to Mr. *Crampton*.

I previously knew, however, from other sources of information, that orders had issued to *somebody* under date of June 22, 1855; and if I ever said anything on that subject of the nature imputed by Mr. Crampton, it must have been that the recruitment continued long after it ought to have ceased in prompt or due execution of the orders described by Lord Clarendon. And the fact is so.

Orders to stop recruiting in the United States, dated in London, the 22d of June, should have reached Halifax the 5th of July, and

533] Washing*ton the 8th of July, by the Cunard mail-steamer, the America.—(National Intelligencer, July 6, 1855.)

Now let us see how, when, and by whom the recruiting was actually stopped in the United States, Canada, and Nova Scotia.

Mr. Crampton expressly says in the letter before me, that he, not Sir Edmund Head, gave orders to stop the reception of recruits in Canada, by telegraph, dated "somewhere about," that is, *not until after the 2d of August;* he implies, but does not distinctly say, that at the same time he sent orders to the same effect to New York, and that he communicated with Sir Gaspard Le Marchant.

Thus, upon his own declaration, the recruiting was in fact continued by Mr. Crampton *several weeks* after it ought to have ceased, according to the intention of Lord Clarendon.

The matter stands yet worse on the declaration of Sir Gaspard Le Marchant, as it appears in a letter of his dated January 19, 1856, written in reply to Mr. Crampton's letter of the 13th. He says:

> My instructions on the subject, the only instructions that I received from any source, were conveyed in two notes dated respectively the 5th and the 13th of
> 534] August last, both of which reached me about the same time, the first by the land-route, the second by the Cunard mail-steamer.—(*Ut supra*, p. 233.)

He afterward states, in the same letter, that the time when he received the notes was the 17th of August.

These two notes, it is implied by other parts of Sir Gaspard's letter, were from Mr. Crampton; and they were the only instructions, Sir Gaspard says, which he received from any source. That is to say, the whole business, both in Canada and in Nova Scotia, as well as the United States, was under the superintendence of Mr. Crampton alone; and the orders on the subject from the British government went to him, not to

Sir Edmund Head or to Sir Gaspard Le Marchant. This fact it will be material to remember in the sequel.

It is also proved that the date of Mr. Crampton's orders was the 5th of August; which corresponds with the fact that the latest act of recruiting proved on the trials was of the 5th of August.—(Mr. McKeon's letter to Mr. Cushing, Ex. Doc. Senate, 34th Congress, first sess., No. 35. p. 87.)

Thus far we proceed on the assumption that not only Sir Gaspard Le Marchant, but Mr. Crampton, never received any direct communication of the order of June 22; that the only knowledge Sir Gaspard
[535] had of it was through Mr. *Crampton; and that the only knowledge Mr. Crampton ever had of it was by the incidental reference to it in Lord Clarendon's letter to Mr. Buchanan of the 16th of July, a copy of which was received by Mr. Crampton, at Washington, on the 2d of August.

Is that possible? Can it be that the foreign office of the United Kingdom thus carries on its business? That Mr. Crampton was left by Lord Clarendon to discover the existence of such an order through the indirect channel of his own letter to Mr. Buchanan? It is not possible and is not the fact.

On the 22d of June, 1855, Lord Clarendon addressed to Mr. Crampton the following letter:

"Extract."

FOREIGN OFFICE, *June* 22, 1855.

I communicated to the war department Mr. Lumley's dispatch of the 21st ultimo, inclosing copies of his correspondence with Her Majesty's consul at Mobile, with regard to an offer made by a Pole, resident in that city, to enlist several of his countrymen for Her Majesty's foreign legion.

I have been informed by Lord Panmure in reply, that his lordship wishes all further proceedings in the matter of enlistment to be stayed, and the project to be definitively abandoned.

[536] Corresponding instructions to the governor-*general of Canada, and to the lieutenant-governor of Nova Scotia, will be dispatched by this evening's mail.—(Papers, *ut supra*, No. 22. p. 16.)

Now comes the question, why were not these orders executed by Mr. Crampton? How did it happen that they never reached Sir Gaspard Le Marchant? That they never did reach him is clear, for the *first* and *only* instructions he ever received on the subject were from Mr. Crampton, under date of the 6th of August. But what became of Lord Clarendon's letter to Mr. Crampton of the 22d of June? That letter, as appears on its face, left England by the steamer of the 23d, the America, whose mail was in Washington the 8th of July. Of course Mr. Crampton persisted in the enlistment business for about one month after the receipt of express orders for its cessation directed personally to him by the Earl of Clarendon.

What became of the orders dispatched by the same mail to Sir Gaspard Le Marchant? Of that, no explanation appears. But the subject has another bearing, of deepest importance to the good understanding of the United States and of Great Britain.

Mr. Crampton left Washington on the 2d of May, 1855, to attend to the recruiting business in Canada and Nova Scotia.—(*Ut supra*,
[537] pp. 131, 132.) *He returned to Washington on the 2d of June, and there he remained during the month of July.—(*Ut supra*, pp. 22, 132.) Why did he not obey the orders of his government, as communicated in Lord Clarendon's letter of the 22d of June, and put a stop to recruiting at once on the 8th of July, instead of waiting until

the 5th of August? He was forced to act on the 5th of August, because the orders of June 22 had then come to the knowledge of this Government through Lord Clarendon's letter to Mr. Buchanan. Why did he not act sooner? It is not for me to answer that question. The answer may be inferred from the facts and circumstances exposed by the Secretary of State.

The important consideration here is, that the conduct of Mr. Crampton in regard to that letter of Lord Clarendon's is the proximate cause of all the serious controversy between the two governments on the subject of enlistment.

Mr. Marcy's second letter on the subject is dated July 15, 1855. He had called the attention of Mr. Buchanan to the subject by a previous letter of the 9th of June. You, sir, felt constrained to direct the Secretary of State to repeat the complaints of this Government so soon, and without waiting for a reply to the first communication, in conse-
538] quence of the apparently increased activity of the recruit*ing business in the interval, and especially in the month of July. If Mr. Crampton had obeyed the orders which he received on the 8th of July, by putting an instant stop to recruitments in the United States, it is probable that either no occasion would have arisen for the dispatch of Mr. Marcy's letter of the 15th of July, or at any rate it would have been different in tenor. And in the sequel, when Lord Clarendon's letter of the 16th of July arrived, the explanations contained in that letter, coupled with the fact of the actual cessation of the recruiting early in July, might have sufficed, in your opinion, to justify this Government in not pursuing the matter any further, and so have ended the question as between the two governments.

On the recent occasion of Mr. Crampton's omission to obey Lord Clarendon's instructions to communicate his letter of the 10th of November to Mr. Marcy, his act of non-compliance with instructions in that respect, negligence, misjudgment, or whatever else it may have been, was somewhat singular, especially in view of his own condition at that time as a minister under request of recall because of his being unacceptable to the United States. It was prejudicial to both countries, because it served to place this Government in a false position with respect to the subject-matter of the dispatch, the question of Central
539] *America, and thus to cause Lord Palmerston and Lord Clarendon to go before Parliament in February, under incorrect impressions regarding the attitude of the United States. That was an evil, but a reparable one. In the present case the evil was irreparable, because of the new events which occurred to complicate the question.

On the 8th of July this Government had no knowledge, although it began to have suspicions of the deep complicity of Mr. Crampton in the systematic violation of the laws and the sovereign rights of the United States. Of course no steps had then been taken looking to the demand for his recall.

If, on receiving Lord Clarendon's letter of June 22, on the 8th of July, Mr. Crampton had gone immediately to Mr. Marcy, and shown him that letter, with proper assurances that orders had actually been given to stop all recruiting, would not the communication have produced in the mind of the latter such conviction of the loyalty of Lord Clarendon in the matter, as to have induced him not only to advise that what there had been of inconvenience in the action of the British government should be overlooked, but also to stifle his growing suspicions of Mr. Crampton?

I cannot but think so. In which event the indications.
540] which were beginning to appear, of *Mr. Crampton's prominent

participation in the enlistments would not have been followed up in July; the proofs of his complicity would not have come in to demand consideration in August; there would have ceased to be occasion for the demands made in Mr. Marcy's letter of July 15, and in that of September 5; the judicial proceedings of September and of October might have been dispensed with, and, in a word, all which there has been of irritating or embarrassing in the question could have been effectually saved both to Great Britain and to the United States.

In view of all which herein appears, I venture, sir, to express the hope that you will be satisfied that, if it happened to me in January last to say to Mr. Crampton or to anybody else that the recruitments did not cease so soon as, in reference to the directions of Lord Clarendon, they ought to have done, I said what is true, and is incontrovertibly established as fact by the declarations of Mr. Crampton and of Sir Gaspard Le Marchant, and, in addition to that, by consideration of Lord Clarendon's letter of the 22d of June, communicating the original order to Mr. Crampton.

I observe, also, in the same collection of "papers," a letter
[541] from Lord Clarendon to Mr. Crampton, * of the 8th of February, 1856, which betrays the existence of erroneous impressions regarding my relation to the judicial proceedings at Philadelphia.

He assumes, and then proceeds to draw inferences from the assumption, that my instructions of the 12th and 17th of September to the district attorney of Eastern Pennsylvania were published "a few days before the trial of Hertz, at Philadelphia, took place."—(*Ut supra*, p. 167.) That is an error. The letters were not published until after the trial.—(Papers, *ut supra*, p. 106.) Of course all the reflections, founded on the opposite supposition, fall to the ground.

The Earl of Clarendon proceeds to build up another series of reflections and imputations upon the suggestion that the instructions to the district attorney of Eastern Pennsylvania were my own individual act. That, of course, is an error. It need not be said to you, except for the purpose of thus fixing the truth of history, that neither the dispatch of the instructions in question nor any other important step in the business was taken without express authority of the Secretary of State and the President.

In a word, those instructions were an act in the due course of domestic administration, as to which the only thing remarkable is that
[542] * they should have been made the subject of remark by a foreign government.

But any disposition which might otherwise be entertained by me to comment at more length on the letter of the Earl of Clarendon, is removed by perusal of the letters of Mr. Crampton in this collection of documents, and in the "correspondence with the United States respecting Central America," likewise recently presented to Parliament. My previous views of the action of the Earl of Clarendon, in matters affecting this country, have undergone material modification by the knowledge now acquired of the *curiosa felicitas* of the British minister in the perpetration of mistakes, and the very inexact representations which he habitually made regarding the conversations, opinions, and purposes of individuals in the executive and in the Congress of the United States.

I have the honor to be, very respectfully,

C. CUSHING.

The PRESIDENT.

[543] **Message of the President of the United States, communicating to Congress information that he had ceased to hold intercourse with the envoy extraordinary and minister plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland near this Government, with the considerations of public duty which have led to this measure, and the documents relating thereto.—(See Senate documents, 34th Congress, 1st session, Ex. Doc. 80.)*

To the Senate and House of Representatives:

I have ceased to hold intercourse with the envoy extraordinary and minister plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, near this Government.

In making communication of this fact it has been deemed by me proper also to lay before Congress the considerations of indispensable public duty which have led to the adoption of a measure of so much importance. They appear in the documents herewith transmitted to both Houses.

FRANKLIN PIERCE.

WASHINGTON, *May* 29, 1856.

544] ** Mr. Dallas to Mr. Marcy.*

[Extract.]

No. 8.] LEGATION OF THE UNITED STATES,
London, May 1, 1856.

DEAR SIR: I sent my No. 7 to Liverpool, to go by the steamer Atlantic, on the morning of the 30th April, some hours before receiving the note, of which a copy is annexed, from Lord Clarendon, apologizing for not having been able to get his reply to your dispatch ready in time. Yesterday evening that reply, in form, addressed to me, was received at the legation. I have this morning acknowledged its reception by a note, the copy of which also accompanies this dispatch. And I now transmit to you, by the earliest opportunity, the steamer Asia, on the 3d instant, full and exact copies of that document and the papers attached to it.

I am, &c.,

G. M. DALLAS.

Hon. WM. L. MARCY,
Secretary of State.

Mr. Dallas to Lord Clarendon.

LEGATION OF THE UNITED STATES,
May 1, 1856.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor to acknowledge the receipt yes-
545] terday of a note, dated on *the 30th of April, 1856, from the Earl of Clarendon, Her Majesty's principal secretary of state for foreign affairs. This note, purporting to be a reply to the statements, views, and arguments contained in the dispatch addressed by Mr. Marcy, the Secretary of State, to Mr. Buchanan, the predecessor of the undersigned,

on the 28th of December, 1855, a copy of which dispatch was left with the Earl of Clarendon, on the 29th of January, 1856, and purporting also to set forth additional reasons, with documents and affidavits not heretofore communicated to the American Government, impeaching the veracity and moral standing of the principal witnesses, prosecuting officers and others, connected with the judicial investigations had on the proceedings within the limits of the United States to effect the enlistment of soldiers for the British army, it will be the care, as it is the duty, of the undersigned to transmit, in copy, to Mr. Marcy by the steamer of Saturday, the 3d instant.

The undersigned having received no instructions which authorize his interference with the correspondence on the subject of the Earl of Clarendon's note, withholds any observation, and he begs his lordship to accept the renewed assurance of his most distinguished consideration.

G. M. DALLAS.

[546] **Lord Clarendon to Mr. Dallas.*

FOREIGN OFFICE, *April* 30, 1856.

The undersigned, Her Majesty's principal secretary of state for foreign affairs, had the honor to receive, on the 29th of January, from Mr. Buchanan, envoy extraordinary and minister plenipotentiary of the United States at this court, a copy of a dispatch, dated the 28th of the previous December, addressed to Mr. Buchanan by Mr. Marcy, Secretary of State of the United States, containing observations on a dispatch which the undersigned had directed Her Majesty's minister at Washington to communicate to Mr. Marcy. Mr. Marcy's dispatch was in continuation of the discussion which had been some time pending between the two governments on the subject of the conduct which was alleged by the Government of the United States to have been pursued by certain of Her Majesty's officers, in giving effect to the intentions of Her Majesty's government to receive into the military service of the Queen any persons who, coming from any quarter into Her Majesty's dominions, might then be willing to engage in that service.

The undersigned has hitherto deferred replying to Mr. Marcy's dispatch, not only because it was more consistent with the respect which Her Majesty's government entertain for the United States, thoroughly to inquire into the allegations contained in it, but also because it [547] was just and right towards Her Majesty's *officers whose conduct was impugned to put them in possession of the charges brought against them, and to give them that opportunity of explanation and defense which was then for the first time afforded them.

The undersigned, before he adverts to Mr. Marcy's last dispatch, must express his deep regret that the Government of the United States should have deemed it necessary to continue a controversy on a question which Mr. Buchanan considered at the time would be finally settled by the note of the undersigned of the 16th of July, 1855—a note which Mr. Buchanan said he would transmit with much satisfaction to his Government. The undersigned had, indeed, hoped that that note, together with his subsequent communications of the 27th of September to Mr. Buchanan, and of the 16th of November, through Mr. Crampton, to the Government of the United States, would have been accepted by a friendly government, such as that of the United States, as a disclaimer of any intention to give offense, and as a satisfaction

for any offense which that Government might have been led by circumstances to think had, though unintentionally, been given.

For what has been the course of the transactions which have given rise to this correspondence?

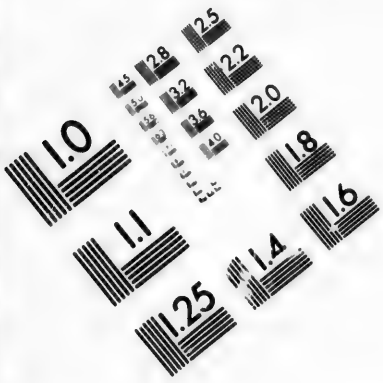
On the breaking out of the late war between the western powers
[547] and Russia, the British govern*ment was informed that many persons resident within the United States—some natives of the continent of Europe, and some natural-born subjects of Her Majesty—were desirous of entering into the military service of Great Britain. The British government believing the information they had received on this matter to be well founded, and being anxious to increase, as rapidly as possible, their military force, took steps to avail themselves of this disposition, and gave directions that any persons presenting themselves within the British North American provinces, willing to enlist and found fit for service, should be engaged for the British army. But Her Majesty's government gave the most positive orders that in making arrangements for this purpose nothing should be done to infringe, in any manner whatsoever, the neutrality laws of the United States.

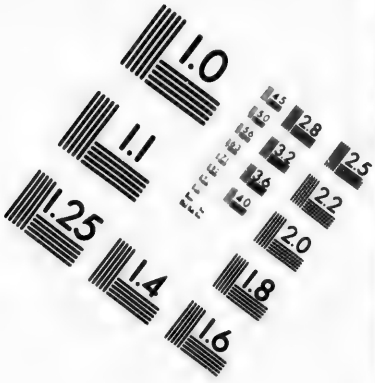
It was not doubted that such arrangements might be carried into execution without any violation of those laws, because those laws prohibit enlistments or engagements only within the territories of the United States; they do not forbid citizens of the United States, or residents therein, from leaving those territories; nor do they forbid such citizens or other persons from engaging or enlisting in military
[549] service elsewhere, *when of their own free will, and without any previous contract or engagement, they may have left those territories.

The intentions of the British government, and the arrangements made to carry those intentions into execution, were not concealed from the Government of the United States.

Those intentions and arrangements were frankly stated by Mr. Crampton to Mr. Marcy in a conversation on the 22d of March, 1855, and the only observations which Mr. Marcy made in reply were that the neutrality laws of the United States would be rigidly enforced, but that any number of persons who desired it might leave the United States, and get enlisted in any foreign service.

Up to this point, therefore, there was no misunderstanding as to the purpose of the British government, and no difference of opinion as to the legality of the course which that government intended to pursue. But the British government soon found, by accounts which reached them from the United States, that it would be difficult to prevent the execution of the contemplated arrangements from being attended by circumstances which might give rise to discussions between the
[550] two governments. It *was seen that, however strict might be the orders of Her Majesty's government that nothing should be done in contravention of the laws of the United States, and however scrupulous Her Majesty's officers in America might be in obeying those orders, yet a misconception of the precise bearing of those laws might lead some of those officers unintentionally to overstep their limits, while other persons, either from honest zeal, or for the sake of gain, or from a desire to entrap Her Majesty's officers, might do things at variance with the provisions of those laws. Her Majesty's government, therefore, being most anxious that nothing should happen to disturb the good understanding between the two governments, and being desirous of showing unequivocally their respect for the laws of the United States, at once, and of their own accord, determined to give up the further prose-





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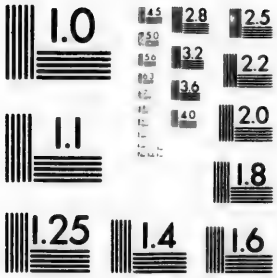

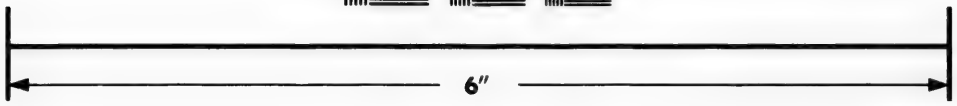

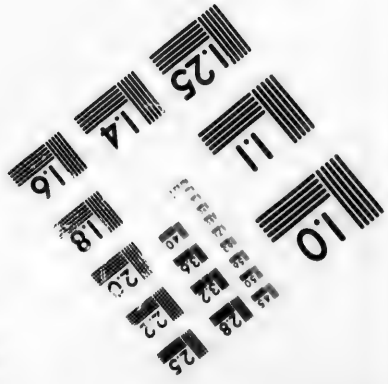

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cution of the arrangements in question, and they accordingly sent out to Canada and Nova Scotia, on the 22d of June, 1855, orders to discontinue all further proceedings in the matter of enlistment for the foreign legion.

A fortnight after these orders had been sent out, the under-
[551] signed received from Mr. Buchanan a *note, dated July 6, alleging that the neutrality laws of the United States had, in many instances, been violated by persons taking steps (either with or without the approbation of the British government) for the purpose of engaging or enlisting within the United States recruits for the British service: and Mr. Buchanan, in the conclusion of his note, stated that "the President would be much gratified to learn that Her Majesty's government had not authorized the proceedings complained of, but had condemned the conduct of its officials engaged therein, and had visited them with its marked displeasure, as well as taken decisive measures to put a stop to conduct contrary to the laws of nations, the laws of the United States, and the comity which ought ever to prevail in the intercourse between the two friendly powers."

The undersigned, in reply to this note, expressed to Mr. Buchanan, on the 16th of July, the regret of Her Majesty's government, if the law of the United States had been in any way infringed by persons acting with or without authority from Her Majesty's government; and he stated that any such infringement of the law of the United States would be contrary to the wishes and the positive instructions of the British government.

[552] The undersigned went on to explain his reasons *for believing that no person authorized to act for the British government had violated the law of the United States; and, in conclusion, he stated that the request of the President, that decisive measures might be taken to put an end to these proceedings, had been anticipated by the spontaneous act of Her Majesty's government, who had, a fortnight before the receipt of Mr. Buchanan's note, sent out orders to put an end to the arrangement for enlisting, within the North American provinces, persons who might come there from other places.

Mr. Buchanan, in reply, said, in a note dated the 18th of July, that he should feel much satisfaction in transmitting to his Government the note of the undersigned.

So strong appears to have been the impression on the mind of Mr. Buchanan of the satisfactory nature of this communication, that when afterwards he received a dispatch from Mr. Marcy with renewed instructions to address remonstrances to the British government on the subject of the recruiting proceedings, he abstained from acting upon those instructions, and withheld Mr. Marcy's dispatch containing them from the knowledge of Her Majesty's government, obviously because he perceived by its date (the 15th of July) that it was written long before the
[553] note *of the undersigned, of the 16th of July, could have been received by Mr. Marcy, and because he concluded that when that note should have been received, the Government of the United States would be satisfied with its contents.

For a considerable time this conclusion appeared well founded. On the 5th of September, however, Mr. Marcy addressed a note to Mr. Crampton, not alleging that fresh subjects of complaint had arisen since the receipt in America of the British orders of the 22d of June, but going back to the same transactions to which Mr. Buchanan's note of the 6th of July had adverted, and renewing all his original complaints, as if no notice had been taken of his former representation, as if no re-

gret had been expressed, and as if no measures had been adopted to put an instant stop to the proceeding out of which his complaints had originated.

A communication so much at variance with what Mr. Buchanan's note of the 18th of July had led Her Majesty's government to expect, might well be received with some feelings of surprise, inasmuch as they believed that they had given to the Government of the United States every satisfaction which one government could reasonably expect to
[554] receive from another in a case *of this kind.

The undersigned, however, on the 27th of September, replied to Mr. Marcy's note, answering the allegations renewed in it, and repeating that Her Majesty's government had no reason to believe that any of Her Majesty's servants, or any agents duly authorized by them, had disregarded the injunctions to respect and to obey the laws of the United States.

Nevertheless, the Government of the United States still considered this answer unsatisfactory, and on the 13th of October Mr. Marcy addressed another dispatch on these matters to Mr. Buchanan, which was communicated to the undersigned on the 1st of November. In that dispatch Mr. Marcy renews his general assertions, that Her Majesty's officers in America had violated the laws of the United States; he refers to his dispatch of the 15th of July, which Mr. Buchanan had abstained from communicating on the supposition that the note of the undersigned of the 16th of July had finally settled the question at issue, and he states that the said dispatch of the 15th of July indicated the satisfaction which the Government of the United States believed it had a right to claim from the government of Great Britain.

[555] *This dispatch of the 15th of July, which was not communicated to the undersigned by Mr. Buchanan till the 2d of November, concludes by saying that "the President is disposed to believe that Her Majesty's government has not countenanced the illegal proceedings of its officers and agents since its attention was first directed to the subject, and will consider it alike due to itself and the United States to disavow their acts, and deal with them in such a manner as their grave offense merits," but that, "as recruiting for the British army in the mode alluded to is still prosecuted (as he believed) within the United States by officers and agents employed for that purpose, the President instructs Mr. Buchanan to say to Her Majesty's government that he expects it will take prompt and effective measures to arrest their proceedings, and to discharge from service those persons now in it who were enlisted within the United States, or who left the United States, under contracts made here, to enter and serve as soldiers in the British army."

This, then, is the satisfaction which, as late as the 13th of October, Mr. Marcy declared was that which the Government of the United States demanded.

[556] *With respect to the first part of this demand Her Majesty's government deny that any illegal proceedings were, so far as they know, committed by its officers or authorized agents, and therefore they have none to disavow, and no officers or agents to deal with as offenders. With regard to the other points specified by Mr. Marcy, the undersigned, on the 16th of November, deeming it respectful to the Government of the United States to do so, entered into a detailed, and, as he has hoped, a satisfactory reply to the arguments and statements contained in Mr. Marcy's dispatch of the 13th of October. In that reply the undersigned stated that the most material point, that of the alleged

recruiting, had been already disposed of for nearly four months before the date of that dispatch; the recruiting arrangements and proceedings had been abandoned by orders sent by Her Majesty's government on the 22d of June; and that the second part of the satisfaction required it was not in their power to give, because no person had, to their knowledge, been enlisted within the United States, or left the United States under contract made therein to enter into service in the British army. And he further added that if it could be shown that any
[557] *men had been so enlisted they should immediately be discharged and sent back to the United States. The undersigned thus showed that the satisfaction claimed by the Government of the United States had long since been given, as far as it was, in the nature of things, possible to give it; and, in addition to the satisfaction asked for, he expressed the regret of Her Majesty's government if anything had been done by any person, authorized or unauthorized, which could be considered an infringement of the law of the United States.

It might naturally have been supposed that the correspondence would here have ended. Regret has been expressed for any infringement of the law of the United States, if any had taken place, notwithstanding the positive and repeated orders of Her Majesty's government to the contrary. The satisfaction which the Government of the United States, after mature deliberation, had demanded, had either been spontaneously and by anticipation granted, or had been shown to be impracticable because there was no man in the British service whose enlistment, or contract to enlist, had, to the knowledge of Her Majesty's government, taken place in the manner specified by Mr. Marcy in his dispatch
[558] of *the 15th of July, and whose discharge, therefore, could form part of the satisfaction indicated by Mr. Marcy. Her Majesty's government, however, expressed their readiness to give that satisfaction also, if any case should be established to which it could apply.

Her Majesty's government were, however, disappointed in the confident expectation which they had entertained that this further explanation would prove satisfactory, for, on the 29th of January of the present year, Mr. Buchanan communicated to the undersigned a dispatch from Mr. Marcy, dated the 28th of December preceding, recapitulating the complaints of the Government of the United States, and making a demand in the way of satisfaction different from those which were mentioned in Mr. Marcy's note of the 15th of July, and which were referred to, in his dispatch of the 13th of October, as the satisfaction which the Government of the United States believed itself entitled to claim. This demand consisted in an application for the recall of Her Majesty's minister at Washington, and of Her Majesty's consuls at Philadelphia, New York, and Cincinnati. It will naturally be asked whether any new ground has been found for this demand, or whether any new event
[559] had happened between the 13th of October *and the 28th of December, in which these officers of Her Majesty had been concerned? Nothing of the kind had taken place, and the accusations made against those officers, in Mr. Marcy's dispatch of the 28th of December, rest upon statements which were equally within the knowledge of the Government of the United States on the 13th of October, when no such demand was made.

Before the undersigned proceeds to reply to Mr. Marcy's note of the 28th of December, he must notice an erroneous construction which Mr. Marcy has there put upon a passage in a dispatch of the 12th of April, 1855, from the undersigned to Mr. Crampton, which was communicated by him to Mr. Marcy. The passage is as follows: "I entirely approve

of your proceedings, as reported in your dispatch (No. 57) of the 12th ultimo, with respect to the proposed enlistment, in the Queen's service, of foreigners and British subjects in the United States." Mr. Marcy assumes, and argues upon the assumption, that the meaning of this passage was that the enlistment of the persons mentioned, and which were approved of by Her Majesty's government, were to take place in the United States; whereas the sentence, according to its obvi-
560] ous meaning, *relates to foreigners and British subjects resident in the United States. The word "in" has reference to the place where they resided, and not to the place where they were to be enlisted; and if any doubt could arise on this point, that doubt must have been removed by the concluding passage, which adverts to the neutrality law of the United States, and says that Her Majesty's government would on no account run any risk of infringing that law. This construction of the passage under consideration does not appear to have occurred to Mr. Marcy at the time when the dispatch of the undersigned of the 12th of April was communicated to him by Mr. Lumley. So far from it, Mr. Marcy expressed to Mr. Lumley his satisfaction with that dispatch, and desired that he might be furnished with a copy of it, in order that he might show it to his colleagues.

The undersigned must also further observe that Mr. Marcy, in the same dispatch, has misconceived the meaning of an expression used by the undersigned in making an offer, above referred to, that any man who might have been enlisted within the United States should be immediately discharged and sent back. The reference there made
561] to British law was merely *intended to indicate that if persons had been enlisted under the circumstances supposed, such enlistment would have been at variance with British, as well as with American, law; but the undersigned did not mean that respect would not be paid, in the discharge of men, to the principles of the law of the United States alone, should that law appear to have been violated in a single case.

In reply to the general statements of Mr. Marcy's dispatch, the undersigned must repeat that Her Majesty's government gave the most positive orders that no man should be enlisted or engaged within the territory of the United States, and that the neutrality laws of the United States should be strictly and scrupulously respected. But Mr. Marcy now contends that this was not enough; and though, in conversation with Mr. Crampton, on the 22d of March, 1855, he said that he could not object to any number of persons going to Nova Scotia to be there enlisted, provided the neutrality laws of the United States were not infringed, he now argues that the enlistment in Nova Scotia of persons coming thither from the United States was a violation of the policy of the United States, and that not to respect that policy was an of-
562] fense on the *part of Great Britain against the sovereign rights of the United States.

Now, in reply to this, the undersigned begs to observe that the policy of a nation in regard to its internal arrangements must be sought for in the laws of that nation; that what those laws forbid it must be understood to be the policy of the state to prohibit; and that what those laws do not forbid, it must be understood to be the policy of the state to allow. In every state, whatever may be its form of government, there is a sovereign power; that sovereign power may impose upon the subjects or citizens of such state what duties, obligations, and restrictions it may think fit; and it is a necessary conclusion that when the sovereign power puts a limit to its enactments, whether of obligation or

of prohibition, it means to leave its subjects or citizens free in regard to all matters not within the enactments of the law. This principle is indeed admitted by Mr. Buchanan's note of the 6th of July, wherein he lays it down that the neutral policy of the United States is "defined and enforced" in the statute of 1818.

Different countries have different laws in regard to the enlist-
[563] ment of their subjects and *citizens in the military and naval service of other states, and these laws vary according to the different policy of these countries with respect to such matters.

In Great Britain the law not only prohibits recruiting or enlisting within the British dominions for the service of any foreign state, without the permission of the sovereign, but it goes farther, and prohibits any subject of Her Majesty from so enlisting, even elsewhere, without the royal permission. The policy of Great Britain hence appears to be to prevent British subjects from entering at all into the service of foreign states without the permission of the Crown.

The law of the United States appears to be different. Her Majesty's government understood, and that understanding is confirmed by Mr. Buchanan's note of the 6th of July, that the law of the United States only forbids enlistments, recruiting, and contracts or engagements within the United States, and hiring or retaining persons to quit the United States with the intent to be enlisted elsewhere, but it does not forbid citizens of the United States, who may have used their natural right of

quitting the United States, to enlist into the service of a foreign
[564] state, when they have *left their own country. The sovereign power of the United States might, if it had chosen to do so, have followed its citizens with a prohibitory enactment beyond the territory of the United States, but it has not thought fit to do so, and the just and inevitable conclusion is that what it might have forbidden, but has not forbidden, it has designedly allowed—that is to say, in other words, that it is the policy of the United States to prevent foreign enlistment within the United States, but that it is not the policy of the United States to forbid citizens of the United States to enlist, when out of the United States, into the service of foreign states, if they should choose to do so.

Such being the state of this matter, it is obvious that the British government cannot justly be charged with any disregard of the policy of the United States, nor with any disrespect to their sovereign rights by taking into the Queen's military service any persons who, having come from the United States, freely and without contract or engagement, into a British territory, might then be willing to enlist.

The real questions at issue between Her Majesty's government
[565] and that of the United *States are, whether the British government ordered or contemplated any violation of the neutrality laws of the United States; whether, if the British government did not order or contemplate such violation, those laws were nevertheless violated by persons acting with the authority or approbation of the British government; and lastly, whether, if any violation of the law of the United States did take place, sufficient satisfaction has been given to the government of that country.

In regard to the first point, the British government neither ordered nor contemplated any violation whatever of the laws of the United States; but, on the contrary, issued the most positive and repeated orders that those laws should not be infringed by any persons acting under their authority.

In regard to the second point, Mr. Marcy alleges that, notwithstanding the orders of the British government, officers and agents of that

government did, within the United States, do things which were a violation of the neutrality laws of the United States; and Mr. Marcy specifically makes this charge against Mr. Crampton, Her Majesty's minister at Washington, and against Her Majesty's *consuls [566] at Cincinnati, Philadelphia, and New York.

With respect to Mr. Crampton, the undersigned has to state that Mr. Crampton positively and distinctly denies the charge brought against him. He declares that he never hired, or retained, or engaged a single person within the United States for the service of Her Majesty, and that he never countenanced or encouraged any violation of the law of the United States. The charge brought against Mr. Crampton is mainly founded upon evidence given by Strobel on the trial of Hertz, and on the so-called confession of Hertz himself. One of those persons, Strobel, was, in consequence of his misconduct, dismissed from employment by the lieutenant-governor of Nova Scotia at Halifax, and afterwards applied to Mr. Crampton, and endeavored to extort money from him by a threat, which was of course disregarded. The undersigned has the honor to transmit, as inclosures to this note, documents which sufficiently prove that both Strobel and Hertz are wholly unworthy of credit. It is impossible for Her Majesty's government to set the assertions of such men as these against the declaration of Mr. Crampton, a *man of unquestionable honor. [567]

The undersigned must indeed remark that the whole proceeding in regard to the trial of Hertz was of such a nature that whilst Her Majesty's ministers and Her Majesty's consuls might be, and indeed were, inculpated by the evidence of unscrupulous witnesses, that minister and those consuls had not any means or any opportunity of rebutting the charges which were thus incidentally and indirectly brought against them.

With regard to Her Majesty's consuls at Cincinnati, Philadelphia, and New York, they all equally deny the charges which have been brought against them; and they declare that they have in no way whatever infringed the laws of the United States.

With respect to Mr. Roweroft, Her Majesty's consul at Cincinnati, the undersigned has to observe, that legal proceedings against that gentleman are still pending. As to the origin, character, and nature of those proceedings, the undersigned might have much to say; but as they are still pending, he abstains from doing so. He must, however, be permitted to remark, that it would at all events be inconsistent with the [568] plainest principles of *justice to assume as established charges which are still the subject-matter of judicial investigation.

The accusation against Mr. Mathews, Her Majesty's consul at Philadelphia, rests entirely upon assertions made by Hertz. Those assertions are positively denied by Mr. Mathews, and Her Majesty's government can scarcely believe that the Government of the United States, with the knowledge which it will have obtained of the character of Hertz, will hesitate to concur with the government of Her Majesty in giving credit to Mr. Mathews.

With respect to Mr. Barclay, Her Majesty's consul at New York, he declares that he neither favored the alleged recruiting nor participated in it, nor was informed of the hiring, retaining, or engaging any man for that purpose.

Her Majesty's government cannot but accept the denial of these gentlemen as more worthy of belief than the assertions and evidence of such men as Hertz and Strobel.

But Mr. Marcy considers that the conduct of Mr. Barclay in

[569] the affair of the bark Maury ought to be an additional reason *why Her Majesty's government should recall him. Upon this the undersigned must observe that Mr. Barclay received information, on oath, from persons in the service of the United States, leading to the belief that the bark Maury was fitting out with designs hostile to British interests, and at variance with the neutrality laws of the United States. It was Mr. Barclay's bounden duty to communicate that information, without delay, to Her Majesty's minister at Washington. Mr. Barclay did so, and his direct action in the matter was then at an end. Mr. Crampton submitted this information to the proper authorities of the United States, in order that they might determine what proceedings, if any, it might be right to take thereupon. The officers of the United States considered the *prima facie* case against the Maury to be sufficient to call for proceedings on their part. Such proceedings were accordingly instituted by them, and not by Mr. Barclay, whose conduct in regard to the Maury was in strict performance of his duty, and received the approval of Her Majesty's government.

With regard to the last point the undersigned must refer to the [570] offers of sat*isfaction, and to the explanations already made, and to the repeated expression of sincere regret of Her Majesty's government, if, contrary to their instructions and to their reiterated directions, there has been any infringement of the laws of the United States.

The undersigned has now had the satisfaction of communicating to the Government of the United States the statements and declarations of Her Majesty's minister at Washington, and of Her Majesty's consuls at Cincinnati, Philadelphia, and New York, as to the conduct imputed to them.

The Government of the United States had been led to suppose that the law and the sovereign rights of the United States had not been respected by Her Majesty's government, and, relying upon evidence deemed to be trustworthy, they believed that that law and those rights had been infringed by British agents.

If such had been the case, the Government of the United States would have been entitled to demand, and Her Majesty's government would not have hesitated to afford, the most ample satisfaction, for no discredit can attach to the frank admission and complete reparation of an [571] *unquestionable wrong. Her Majesty's government, however, unequivocally disclaim any intention either to infringe the law, or to disregard the policy, or not to respect the sovereign rights of the United States; and the Government of the United States will now, for the first time, learn that Her Majesty's minister at Washington, and Her Majesty's consuls at New York, Philadelphia, and Cincinnati solemnly affirm that they have not committed any of the acts that have been imputed to them. The Government of the United States will now, also, for the first time, have an opportunity of weighing the declarations of four gentlemen of unimpeached honor and integrity, against evidence upon which no reliance ought to be placed. The undersigned cannot but express the earnest hope of Her Majesty's government that these explanations and assurances may prove satisfactory to the Government of the United States, and effectually remove any misapprehension which may have hitherto existed, and he cannot doubt that such a result will afford as much pleasure to the Government of the United States as to that of Her Majesty by putting an end to a difference which has been deeply regretted by Her Majesty's government, for there are no two coun- [572] tries which are bound by stronger ties or by higher con*sidera-

tions than the United States and Great Britain to maintain unbroken the relations of perfect cordiality and friendship.

The undersigned requests Mr. Dallas to accept the assurance of his highest consideration.

CLARENDON.

[For inclosures see Senate Documents, first and second sessions Thirty-fourth Congress, vol. 14, 1855–'56.]

Mr. Marcy to Mr. Dallas.

DEPARTMENT OF STATE.
Washington, May 27, 1856.

SIR: The President has carefully considered the note of the 30th ultimo, addressed to you by the Earl of Clarendon, Her Majesty's principal secretary of state for foreign affairs, relative to the questions which have arisen between this Government and that of Great Britain on the subject of recruiting within the United States for the British army, and has directed me to present to you his views thereon, for the purpose of having them made known to Her Majesty's government.

He has been much gratified by the conciliatory spirit of that [573] note, and by the desire *manifested by the Earl of Clarendon to adjust the existing difficulties, and to preserve and strengthen the friendly relations between the United States and Great Britain. The vast interest which the government and people of both countries have in upholding and cherishing such relations cannot be more solemnly impressed upon Her Majesty's government than it is upon that of the United States.

The unequivocal disclaimer by Her Majesty's government of "any intention, either to infringe the law, or to disregard the policy, or not to respect the sovereign rights of the United States," and their expression of regret "if, contrary to their intentions and to their reiterated directions, there has been any infringement of the laws of the United States," are satisfactory to the President. The ground of complaint, so far as respects Her Majesty's government, is thus removed.

But the President extremely regrets that he cannot concur in Lord Clarendon's favorable opinion of the conduct of some of Her Majesty's officers who were, as this Government believed, and, after due consideration of all which has been offered in their defence, still believes, [574] implicated in proceedings which *were so clearly an infringement of the laws and soverign rights of this country. In respect to such of these officers and agents as have no connection with this Government, it has nothing to ask from that of Her Majesty; but the case is different in relation to Mr. Crampton, Her Majesty's envoy extraordinary and minister plenipotentiary to this Government, and the consuls at New York, Philadelphia, and Cincinnati. The President is gratified to perceive that Her Majesty's government would not have hesitated to comply with the request to withdraw these officers from their official positions, if it had entertained the views here taken of their conduct in regard to recruiting contrary to the law and sovereign rights of the United States.

I scarcely need say that, in making this request, no interruption of the diplomatic relations between this Government and Great Britain was anticipated; but, on the contrary, the President was, and is, sin-

cerely desirous to keep them upon a most friendly footing. Mr. Crampton's withdrawal was asked for, expressly upon the ground that "his connection with that affair (raising recruits in this country for the British service) has rendered him an unacceptable representative of
[575] Her Britannic *Majesty near this Government." For the same reason the withdrawal of the three British consuls was also requested. These officers were, as this Government confidently believes, deeply implicated in proceedings contrary to the law and sovereign rights of the United States, and contrary, as it now appears, to the intentions and reiterated instructions of their own government. It was their personal acts, certainly not the less objectionable for having been done contrary to the direction of Her Majesty's ministers, which rendered them, in their official characters and positions, unacceptable to this Government, and induced the President, for that cause, to solicit their recall, believing that by this course he was contributing to the common interest and harmony of the two governments. He has not, after the most mature deliberation, been able to change his view of their conduct, and cannot, therefore, change his purpose in relation to them. Though their conduct related to, and in fact originated, a difficulty which disturbed the cordial harmony and good understanding between the two countries, it constituted a decided objection to them, of a personal character,
[576] which loses none of its force by *the satisfactory adjustment of that difficulty.

The only embarrassment which attends the case is the difference of opinion between the two governments as to the complicity of these officers in illegal proceedings within the United States. In reviewing this subject the President was disposed to avail himself of any reasonable doubts which could be raised in his mind, in order to bring his opinion in this respect into conformity with that of Her Majesty's government; but after a careful reconsideration of the case he has been unable to change the conclusion to which he had previously arrived.

This difference of opinion may be, in some degree, ascribed to the difference in the views of the two governments in respect to the neutrality law and the sovereign rights of this country.

It is not proposed, however, to continue the discussion upon that subject. The conclusions of the President, stated in my dispatch of the 28th of December to your predecessor, in regard to the construction of that law and the character and extent of those rights, remain unchanged, and he cannot forego the duty of using all proper means to
[577] sustain *and vindicate them.

The main cause of this difference of opinion is the different appreciation of the proofs by which the charges against Her Majesty's diplomatic representative and consul are sustained.

Lord Clarendon asks this Government to regard the bare declarations of these officers as of sufficient weight to countervail the evidence against them. Their denials, as presented in his dispatch of the 30th of April—and that is all which has been communicated to this Government on the subject—seem to be special, and do not traverse all the allegations against them. They deny that they have infringed our neutrality law by enlisting persons within the United States for the British service, or hiring or retaining persons to leave the United States for the purpose of being enlisted in that service. The charges against them are much broader, and embrace the offense of violating the laws and sovereign rights of the United States by setting in operation, within our territory, and conducting an extensive system of recruiting, which was not and could not be carried into effect without infringing

578] our laws and *rights, by employing numerous agents to engage persons, for pecuniary or other considerations, to leave the United States for the express purpose of entering into the British army, and by keeping these agents in this employment after it was well known that they were constantly infringing our laws.

The denial of the implicated officers only covers a part of the delinquencies imputed to them; but, confining their exculpatory declaration to the simple charge of having violated the provisions of our neutrality act, it does not merit the consideration which Lord Clarendon has ascribed to it. By adopting Lord Clarendon's construction of our neutrality law, contained in his note of the 16th of November, which renders it almost nugatory, and is contrary to that of this Government and of its judicial tribunals, these officers have not probably found much embarrassment in meeting the charges with a general denial.

But, giving to the declaration of Mr. Crampton and the consuls all the consideration which can be fairly claimed for it under the circumstances of the case, it cannot counterbalance the unimpeached and well-sustained evidence which establishes the charges against

579] *these officers of having infringed the laws and sovereign rights of the United States.

Lord Clarendon's note to you of the 30th of April conveys the impression that the evidence by which these officers are implicated is derived from one or two witnesses whose credibility has been assailed. This, however, is not a correct view of the facts.

By the examination of my dispatch of the 28th of December it will be perceived that these witnesses were strongly corroborated, and that there are proofs, wholly independent of their testimony, abundantly sufficient to establish the complicity of Mr. Crampton and the consuls in the infringement in the laws and sovereign rights of the United States. I trust it will not be questioned that it belongs exclusively to this Government and its judicial tribunals to give a construction to its municipal laws, and to determine what acts done within its jurisdiction are infringements of those laws. This is a matter which concerns its internal administration, and it cannot allow the agents of any foreign power to controvert that construction and justify their conduct by a different interpretation of our laws, which virtually renders them ineffective for the purposes intended.

580] The Earl of Clarendon informs you, in his note *of the 30th of April, that Mr. Crampton positively denies the charge of complicity in any of the acts of illegal enlistment in the United States, and that the three consuls inculpated do the same. He assumes that the charge against them is sustained mainly by the evidence of two persons, Strobel and Hertz, whom he conceives to be unworthy of credit; and appeals to the American Government to accept, as conclusive, the declarations of the minister and consuls. I am instructed to say that these considerations do not relieve the President's mind of the unfavorable impressions produced by the conduct of those gentlemen in relation to foreign recruitment in the United States.

It will be seen, by referring to my dispatch of the 28th of December, in which the grounds of charge against Mr. Crampton were fully stated, that the testimony of Strobel and Hertz was quite a secondary and an unimportant part of the evidence adduced; the charge being supported, independantly of their testimony, by other witnesses, by original letters of Mr. Crampton and others, and by undenied and undeniable acts of Mr. Crampton.

As to Strobel and Hertz, however, it may be observed that the

documents transmitted by *Lord Clarendon, as proving those
[581] persons unworthy of credit, are entitled to but little weight, consisting, as they do, chiefly of *ex parte* affidavits, detailing matters mostly of mere hearsay. And whatever may have been the character of those persons, it by no means follows that they did not testify to the truth. They were agents selected and trusted by Mr. Crampton himself, and to them he committed most important concerns. Such an indorsement should countervail the impeachment of their veracity founded on loose hearsay reports. Nor does it seem to be a thing of much moment in relation to the present question, that Strobel, in consequence of imputed misconduct, was dismissed from employment by the lieutenant-governor of Nova Scotia, and afterward endeavored to obtain money from Mr. Crampton. The fact remains, that he held a commission in the British foreign legion, and that, as it is clearly proved and not denied, he maintained as a recruiting officer, and for a considerable period of time, association, personally or by correspondence, with Mr. Crampton. The employment of Strobel by Mr. Crampton, their long association in the joint work of recruiting in the United States for the foreign legion,
[582] the distinction of *her Majesty's commission of captain in that corps conferred on Strobel, would seem at least to deprive Mr. Crampton of the right to array his credibility as a witness.

But there is a larger and more comprehensive class of considerations applicable to the particular question.

For a period of nearly five months, that is, from about the middle of March, 1855, to the 5th of August, 1855, the peace and order of this country were disturbed, especially in the cities of Boston, New York, Philadelphia, and Cincinnati, by the unlawful acts of numerous persons engaged in raising recruits, or in being recruited for the British foreign legion. They were supplied with ample funds by British agents. They obstinately resisted and set at naught all the efforts of the local authorities of the United States to put a stop to their proceedings; nor did they desist until they received orders to that effect from the British government in the month of August. The recruits thus unlawfully raised in the United States during all that time were conveyed by British agents to Halifax, and there enrolled in the foreign legion.
[583] All these acts, as well as their illegality, *were notorious. Long before the trial of Hertz in September, and of Wagner in October, they must have been brought to the particular notice of Mr. Crampton, the British consuls, and other agents, by preliminary judicial inquiries which took place both at New York and Philadelphia.

In consequence of the steps to that effect taken by me on the 22d of March, the proper instructions were issued on the 23d, and prosecutions commenced in Philadelphia on the 30th of March, and in New York on the 5th of April.

As example of the character of these proceedings, their notoriety and their conclusive legal effect, which occurred in May, deserves particular notice.

At New York on the 14th of May, a number of persons, namely, Godfried Wachter, Wilhelm Schumacher, Julius Parkus, Oscar Cromey, and Andrew Lutz were examined before Commissioner Betts on the charge of recruitment for the service of Great Britain. Eminent counsel were employed by the parties accused, who argued that no offense had been committed, because it did not appear that any valid contract of
[584] enlistment had been consummated. *But this ground of defense was overruled by the commissioner, who, though he discharged

Wachter for defective evidence, committed Lutz, Schumacher, Cromey, and Parkus.

At Philadelphia, on the 25th of May, three persons, Hertz, Perkins, and Bucknall, having been arrested on the charge of illegal recruiting in the service of Great Britain, applied to the circuit court of the United States, by *habeas corpus*, to be discharged from custody. The presiding judge, the Hon. John K. Kane, on examination of the evidence taken in the case before a commissioner, found that the proofs were sufficient to bring the acts of Hertz and Perkins within the condition of the law, but not so as to Bucknall. Accordingly, the latter was discharged, but the two former were committed for trial.

Thus, so early as May, it was judicially shown that what was doing in this respect was unlawful. Mr. Crampton was acquainted with these proceedings, and was thus sufficiently admonished that the acts of recruitment carried on under his authority did, in fact, whatever may have been his intention, constitute a violation of the municipal law of the United States. This had been decided by the courts of the United States, and was publicly and extensively made known. It is not
585] controverted, *indeed it is admitted, that he had the recruiting business in his charge and under his control, yet he permitted it to be continued, although judicially determined to be unlawful, through the months of May, June, July, into August.

Now this long series of acts, unlawful and otherwise prejudicial to the good name and the tranquility of this country, were performed by persons who were liberally paid by British officers, and many of whom actually entered the military service of Great Britain. That was incontestably proved on the trial of Hertz and Wagner by evidence which has not been, and cannot be, impeached; and, although the evidence adduced on these trials does not need corroboration, still it may not be amiss to add that much other evidence to the same effect is in the possession of this Government, some of which is annexed to this dispatch in the form of documents responsive to those accompanying the letter of the Earl of Clarendon.

Who is to be held accountable for these unlawful acts? Were they all performed by volunteer and irresponsible persons, as argued in the Earl of Clarendon's dispatch of the 16th of July? That cannot be
586] admitted, for the conclusive reason that they received pay *from British officers, and of course were employed by some responsible agents of the British government.

The Earl of Clarendon, in behalf of Her Majesty's government, disclaims all intention to violate the laws, compromise the neutrality, or disrespect the sovereignty of the United States by enlisting troops within their territory. The President unreservedly accepts, and is fully satisfied, with this disclaimer. Of course the unlawful acts in question were not authorized by the British government; but the fact is, nevertheless, well established that they were done, and done in the name and at the expense of the British government. Who, then, is responsible for those acts? Were there no direct proof—though there is much of that character—the inference would be irresistible that, not being authorized by the British government itself, they were the unauthorized acts of British agents in the United States. Such agents, having acted in willful disregard of the orders of their government in thus infringing our laws, may have failed to inform their government that what they had undertaken to do could not be done without infringing those
587] laws; or by mismanagement, indiscretion, or over *zeal, they may have participated in such infringement, though well know-

ing it was contrary to the wishes and the express orders of their government. However this may be, it is certain that agents existed, because their acts appear. Who were those agents?

Of this we are not left in doubt. In the documents on the subject recently laid before Parliament, it is distinctly stated that the enlistments in the United States did not stop until Mr. Crampton gave orders for their cessation on the 5th of August. He had power to stop the acts of enlistment; he knew the proceedings were, from the commencement, exceedingly offensive to this Government, and that it was devoting its active energies to arrest them; he was bound to know, he could not but know, what was notorious to all the world, that through the months of April, May, June, and July, the recruiting agents in various parts of the United States, and conspicuously in Boston, New York, Philadelphia, and Cincinnati, were keeping up a most unseemly contest with the law officers of the United States, and that at least as early as May the illegality of the proceedings had been pronounced by the federal [588] courts *in New York and Philadelphia; and yet, notwithstanding this, he permitted the unlawful acts in question to go on without check until the month of August. For thus giving countenance to these illegal proceedings he is distinctly responsible.

But his accountability extends yet further; for the same documents show that the official suggestion to the British government of the untoward scheme of obtaining recruits in the United States came from the correspondence of Mr. Crampton, and of the consuls at New York, Philadelphia, and Cincinnati; and that to Mr. Crampton were the superintendence and execution of the scheme committed. And thus it is that he who directed had the power to stop the proceeding; and thus, from early in March until August, he is found busily occupied in superintending enlistments, partly in the United States and partly in Canada and Nova Scotia, and in issuing instructions to the agents engaged in that enterprise.

It does not suffice for Mr. Crampton now to say that he did not intend to commit, or participate in the commission of, any infringement [589] of the laws of the United States. He was *the directing head of long-continued infringements of the law; it was under superior authority from him that acts of continuous violation of law were perpetrated by the inferior agents; some of those agents are proved, by his own letters, to have held direct intercourse with him; and at every stage of inquiry, in numerous cases investigated by the American Government, there is reference, by letter and oral declaration, to the general superintendence of Mr. Crampton.

His moral and his legal responsibility are thus demonstrated. With full information of the stringency of the laws of the United States against foreign recruiting, with distinct perception of its being all but impossible to raise recruits here without infringing the laws, and with knowledge of the condemnatory judicial proceedings of April and May at New York and Philadelphia, yet he persisted in carrying on the scheme until August, when its obstinate prosecution had at length brought on a most unpleasant controversy between the United States and Great Britain. And it is not the least of the causes of complaint against Mr. Crampton, that by his acts of commission in this [590] business, or in *failing to advise his government of the impracticability of the undertaking in which he was embarked, and the series of illegal acts which it involved, and in neglecting to observe the general orders of his government, and to stop the recruiting here the moment its illegality was pronounced by the proper legal authorities of

the United States, he was recklessly endangering the harmony and peace of two great nations, which, by the character of their commercial relations and by other considerations, have the strongest possible inducements to cultivate reciprocal amity.

The foregoing considerations substantially apply to the conduct of the British consuls at New York, Philadelphia, and Cincinnati. Though of subordinate official character, they are not less responsible than Mr. Crampton. The continuous violation of the law proceeded within their respective consulates, month after month, under their eyes, not only without any apparent effort on their part to stop it, but with more or less of their active participation therein. The consulate at New York appears to have been the point at which the largest
[591] expenditures were made; *and it is proved by documents herewith trasmitted, that payments at that consular office to some of the recruiting agents continued to be made by the secretary of the consul and in the consul's presence, from time to time, down to the very beginning of January of the present year.

The President, as has already been stated by me, cannot admit the force of the objection now urged of alleged want of respectability on the part of some of the witnesses by whom these facts were proved, and as to whom a prominent cause of such alleged want of respectability seems to be the fact that their evidence has inculpated their accomplices in the violation of law. The testimony which most directly inculpates the British consul at New York, as will be perceived by the inclosures herewith, is in the affidavits of the very persons relied on by Her Majesty's government for proofs in this case, and whose depositions accompany Lord Clarendon's note to you of the 30th of April.

The Earl of Clarendon perfectly well understands that, in Great Britain as well as in the United States, it would be impossible to administer penal justice without occasionally receiving the evidence
[592] of accomplices. In Great *Britain, not only is evidence of this class received continually in state trials, as well as in inferior matters, but rewards and other special inducements are held out to such witnesses by not a few provisions of acts of Parliament. The competency of such persons as witnesses in a given case, and their credibility, are, in both countries, questions upon which the court and jury, in their respective spheres of jurisdiction, ultimately pass. In the present case conclusions have been established on documentary proofs and other unimpeachable evidence, by proceedings before the proper tribunals of the United States, by the verdicts of juries, and by the rulings of judges, which must be held as final in the estimation of the President.

The Earl of Clarendon suggests, as a consideration pertinent to this question, that the minister and consuls had no means or opportunity of rebutting the charges thus indirectly brought against them, in the trial of the inferior recruiting agents.

In regard to the consuls, the Earl of Clarendon errs in supposing that they had not full means and opportunity, if they saw fit, to appear and to confront and contradict any accusing witnesses. They
[593] *were not allowed to interfere in the trials by mere letters written for the occasion, which, indeed, they could not have done lawfully, had there been no such prohibition; but if, conscious of their own innocence, and that of the parties on trial, and that their own acts would bear examination, it was alike their duty and their right to appear and say so on oath, and to contradict by their testimony whatever was alleged against British officers or agents, if known to them to be untrue.

Nor is it any just cause of complaint that evidence was received upon

these trials impugning the acts of Mr. Crampton. It was, in the due course of proceedings, required to be shown, as against the parties on trial, that the recruitments in which they were engaged were for the service of a foreign government. Mr. Crampton was himself privileged from trial for violation of the municipal law; but the persons whom he employed were not for that cause to go unpunished, nor was the administration of penal justice to be indefinitely suspended on account of his position, and the diplomatic immunities which that conferred. On the contrary, it was peculiarly proper that the facts by which he was
[594] implicated, but for which *he could not be tried, should be verified in due form of law for the information of his own government, as well as that of the United States.

The Earl of Clarendon remarks, in his letter of the 30th of April, that—

> The intentions of the British government, and the arrangements made to carry those intentions into execution, were not concealed from the Government of the United States. Those intentions and arrangements were frankly stated by Mr. Crampton to Mr. Marcy in a conversation on the 22d of March, 1855; and the only observations which Mr. Marcy made in reply were, that the neutrality laws of the United States would be rigidly enforced, but that any number of persons who desired it might leave the United States and get enlisted in any foreign service.

It is incumbent on me to say that in this respect the Earl of Clarendon labors under serious misapprehension, which, while it serves in part to explain how it happened that the enlistments went on for so many months, in a manner contrary to the intentions and express orders of the British government, also serves to increase the weight of Mr. Crampton's responsibility in this respect.

[595] *I repeat now, with entire consciousness of its accuracy, what I stated in my letter of the 28th of December last, that at that interview (on the 22d of March, the only one I ever had with Mr. C., as he admits, in which the recruitment business was alluded to) "he (Mr. Crampton) had satisfied me that his government had no connection with it, and was in no way responsible for what was doing in the United States to raise recruits for the British army;" "but I am quite certain that on no occasion has he intimated to me that the British government, or any of its officers, was, or had been, in any way concerned in sending agents into the United States to recruit therein, or to use any inducements for that purpose; nor did he ever notify me that he was taking, or intended to take, any part in furthering such proceedings. Such a communication, timely made, would probably have arrested the mischief at its commencement."

If he had then apprised me of the system of recruiting which had at that time been already arranged and put in operation within the United States by British agents, and under his superintending direction,
[596] he would have been promptly notified, in the most positive *terms, that such acts were contrary to the municipal law, incompatible with the neutral policy of the country, a violation of its national sovereignty, and especially exceptionable in the person of the representative of any foreign government. Mr. Crampton admits that I specially warned him against the violation of our neutrality laws, but blames me now for not then stating to him that my construction of that law differed from his own. But no such difference of opinion was then developed. Mr. Crampton on that occasion manifested a coincidence in the opinion as to the provisions of that law which I then held, and have since fully disclosed. He called upon me to show a letter which he had written on that day to the consul at New York, "disapproving the proceedings of a Mr. Angus McDonald, *because* I (he) thought those pro-

ceedings would or might be taken to constitute a violation of the act of 1818"—the neutrality law of the United States. What were the proceedings of Mr. McDonald which Mr. Crampton thought might constitute a violation of our neutrality? The simple issuing of a hand-bill specifying the terms on which recruits would be received at Halifax into the Queen's service.

[597] *This opinion of Mr. Crampton ascribes as much stringency to our neutrality acts as has ever been claimed for them by the Government or courts of the United States. I had then no suspicion, nor did Mr. Crampton give me any cause to suspect, that he was acting, or intended to act, upon an interpretation of that law which would justify the act of Mr. McDonald, which he then condemned, and make that law but little better than a dead letter. I could not but suppose that he viewed it in the same light as Lord Clarendon did when he wrote his dispatch to Mr. Crampton of the 12th of April thereafter, in which his lordship declared it to be "not only very just, but very stringent."

To show that I was not mistaken in this respect, I quote a passage from a letter of Mr. Crampton, dated the 11th of March, to Sir G. Le Marchant: "Any advance of money by Her Majesty's agents or others in the United States would constitute an infraction of the neutrality law." The depositions which accompany this dispatch, made by some of the same persons who have furnished the British government with affidavits to impeach Strobel and Hertz, prove conclusively that Mr. Crampton did disburse various sums of money to agents em-

[598] *ployed in recruiting within the United States.

It was, indeed, apprehended by me at that time that violations of that law would ensue. It could not fail to be seen that any organized scheme of a foreign government to draw recruits from the United States, though by mere invitation, would necessarily tend to and result in violations of the municipal law. So decided was my belief in this respect, that measures had already been taken by me in behalf of this Government, as it happened upon the very day of the interview with Mr. Crampton, to institute prosecutions against persons engaged in this business in New York and Philadelphia. I then notified Mr. Crampton of that fact, as he expressly admits in the report of that interview made to his government.

An attempt is made to deduce an excuse for Mr. Crampton's course in the business of recruiting in this country from the alleged fact that he communicated to me on that occasion the arrangements which had been made for that purpose, and that I did not disapprove them otherwise than by insisting upon the observance of the neutrality law of the United States. This allegation is hardly consistent with Mr. Crampton's own statement of what then passed. In the defense of his con-

[599] duct, recently sent by him to his *government, he makes admissions inconsistent with the allegation that there was no concealment on his part, and that the recruiting arrangements were communicated to me. He says that "it is perfectly true that I did not enter into any details of the means which were to be adopted by Her Majesty's government to render available the services of those who tendered them to us in such numbers. There seemed to be obvious reasons for abstaining from this. Even if it had occurred to me, I should have been unwilling to do anything which might have borne the appearance of engaging Mr. Marcy in any expression of favor or approbation of a plan favoring the interests of one of the parties in the present war. All I could desire on his part was neutrality and impartiality."

His reasons for withholding from me the details of the enlistment system—the most important part of it for this Government—are not satisfactory. If Mr. Crampton believed what he was doing, or intended to do, in the way of recruiting, was right, he could have had no reluctance to communicate it to me, for his instructions required him to make that disclosure.

Acting in due frankness, and with a proper regard for the dictates of international comity, Mr. Crampton should, it would seem, have
[600] dis*closed to me all the measures intended to be pursued within the United States by the agents of his government, including himself, in execution of the act of Parliament for raising the foreign legion. Nay, he was expressly commanded by his government to practice no concealment with the American Government on the subject. If he had obeyed these orders, all misunderstanding between the two governments would have been prevented.

Mr. Crampton was the more imperatively called upon to make full explanations on the subject, not only because he was commanded by his government so to do, but for the further reason that, immediately after the breaking out of the war between Great Britain and France on the one hand and Russia on the other, he had, by an official note, addressed to me, invoked the efforts of this government to enforce upon the inhabitants of the country, citizens or others, the necessity of observing the strictest neutrality toward the belligerent parties, and especially to enjoin upon them to abstain from taking part in armaments for the service of Russia, or in "any other measure opposed to the duties of a strict neutrality." To this application the undersigned, by
[601] express direction of the President, replied, declaring that *the United States, "while claiming the full enjoyment of their rights as a neutral power, will observe the strictest neutrality toward each and all the belligerents." Reference was made to the severe restrictions imposed by law, not only upon citizens of the United States, but upon all persons resident within its territory, prohibiting the enlisting men therein for the purpose of taking a part in any foreign war. It was added "that the President did not apprehend any attempt to violate the laws; but should his just expectation in this respect be disappointed, he will not fail in his duty to use all the power with which he is invested to enforce obedience to them."

In view of this formal and solemn appeal by Mr. Crampton to the American Government, and of the assurance he received of its determination to maintain strict neutrality, it was not for a moment suspected that Mr. Crampton could misunderstand this purpose, or believe that he would be permitted to set on foot and execute, for a period of five consecutive months, a systematic scheme to obtain military recruits for the British service in the United States. That Mr. Crampton did enter most deeply into this scheme is proved by the evidence already submitted to Her Majesty's government, but is still more conclusively established by the additional proofs which accompany this dispatch.
[602] What*ever detraction from the value of the testimony against Mr. Crampton may result from the attempt to discredit Strobel and Hertz, is much more than made up by the additional proofs now adduced. This body of strong cumulative evidence confirms the President's former conclusion as to the complicity of Mr. Crampton and the British consuls at New York, Philadelphia, and Cincinnati in the illegal enterprise of recruiting soldiers for the British army within the United States; and the President does not doubt that when this new evidence shall be

brought under the consideration of Her Majesty's government, it will no longer dissent from this conclusion.

The gratification which the President feels at the satisfactory settlement of the recruiting question, in so far as respects the action of the British government itself, has induced him to examine the case again, with a view to remove, if possible, from his mind the personal objections to Her Majesty's minister and consuls. This examination has not produced that effect, but, on the contrary, has strengthened his conviction that the interests of both governments require that those persons should cease to hold their present official positions in the United States.

[603] He sincerely regrets that Her Majesty's govern*ment has not been able to take the same view of the case, and to comply with his request for their recall; but it has not consented to do so.

If, in the earnest desire to act with all possible courtesy toward Her Majesty's government, the President could have suspended his determination in the case, in order to submit the new testimony, which he is confident would have been found sufficient to induce compliance with his request for the recall of the British minister, he is precluded from any such thought of delay by the exceptional character of dispatches of that gentleman, copies of which, having been recently laid before Parliament, have thus come to the knowledge of this Government, and which are of a tenor to render further intercourse between the two governments, through that minister, alike unpleasant and detrimental to their good understanding.

The President has, therefore, been constrained, by considerations of the best interests of both countries, reluctantly to have recourse to the only remaining means of removing, without delay, these very unacceptable officers from the connection they now have with this Gov-

[604] ernment. *This course has been deemed necessary on account of their unfitness for the positions they hold, arising from the very active part they have taken in getting up and carrying out the system of recruiting, which has been attended with numerous infractions of our laws, which has disturbed our internal tranquillity, and endangered our peaceful relations to a nation with which this Government is most anxious to maintain cordial friendship, and intimate commercial and social intercourse.

He has, therefore, determined to send to Mr. Crampton, Her Majesty's diplomatic representative, his passport, and to revoke the exequaturs of Mr. Mathews, Mr. Barclay, and Mr. Rowcroft, the British consuls at Philadelphia, New York, and Cincinnati.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

GEORGE M. DALL ..., Esq., *London.*

[For inclosures see Sen. Docs., 1st and 2d sessions 34th Cong., vol. 14, 1855–'56.]

Mr. Marcy to Mr. Crampton.

DEPARTMENT OF STATE,
Washington, May 28, 1856.

[605] SIR: The President of the United States *has directed me to announce to you his determination to discontinue further intercourse with you as Her Majesty's diplomatic representative to the Government of the United States. The reasons which have compelled him to take this step at this time have been communicated to your government.

I avail myself of this occasion to add that due attention will be cheerfully given to any communications addressed to this Department from Her Majesty's government affecting the relations between Great Britain and the United States which may be forwarded to this Government through any other channel.

Should it be your pleasure to retire from the United States, the President directs me to furnish you with the usual facilities for that purpose. I consequently inclose herewith the passport given in such cases.

I avail myself of this opportunity to renew to you, sir, the assurance of my respectful consideration.

W. L. MARCY.

JOHN F. CRAMPTON, Esq., *&c., &c., &c.*

Mr. Marcy to Mr. Barclay.

DEPARTMENT OF STATE,
Washington, May 28, 1856.

[606] SIR: For reasons which have been com*municated to Her Majesty's government, the President has revoked the exequatur heretofore granted to you, by which you were permitted to exercise the functions and enjoy the privileges of British consul at New York.

I herewith send to you a copy of the act of revocation.

I have the honor to be, your obedient servant,

W. L. MARCY.

Mr. ANTHONY BARCLAY,
Her Britannic Majesty's Consul, &c.

[Same, *mutatis mutandis*, to Mr. Mathews.]

FRANKLIN PIERCE, President of the United States of America.

To all whom it may concern:

Whereas, by letters patent, under the seal of the United States, bearing date the second day of March, A. D. 1843, the President recognized Anthony Barclay as consul of Her Britannic Majesty at New York, and declared him free to exercise and enjoy such functions, powers, and privileges as are allowed to the consuls of the most favored nations; but, for good and sufficient reasons, it is deemed proper that he should no longer exercise the said functions within the United States;

[607] Now, therefore, be it known that I, Franklin *Pierce, President of the United States of America, do hereby declare that the powers and privileges conferred as aforesaid on the said Anthony Barclay are revoked and annulled.

In testimony whereof, I have caused the letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the 28th day of May, A. D. 1856, and of the independence of the United States of America the eightieth.

[L. S.] FRANKLIN PIERCE.

By the President:

W. L. MARCY, *Secretary of State.*

[The same to George Benvenuto Mathew, Her Britannic Majesty's consul at Philadelphia. The same to Charles Rowcroft, Her Britannic Majesty's consul at Cincinnati.]

Mr. Marcy to Mr. Rowcroft.

DEPARTMENT OF STATE,
Washington, May 28, 1856.

SIR: For reasons which have been communicated to Her Majesty's government, the President has revoked the exequatur heretofore granted to you, by which you were permitted to exercise the functions and enjoy the privileges of British consul at Cincinnati.

I herewith send to you a copy of the act of revocation.

[608] *In consequence of this proceeding, the President has deemed it proper that the pending prosecution against you, for the violation of the neutrality law of the United States, should be discontinued. Orders to that effect have been issued to the United States attorney at Cincinnati.

I have the honor to be, your obedient servant,

W. L. MARCY.

Mr. CHARLES ROWCROFT,
Her Britannic Majesty's Consul, Cincinnati.

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[609] **Mr. Cushing, Attorney-General, to Mr. McKeon, district attorney.*

ATTORNEY-GENERAL'S OFFICE,
December 17, 1856.

SIR: Information has been communicated to the Department of State to the effect that arrangements are in train in the city of New York for the purpose of a hostile military expedition against the republic of Venezuela. The statement is, that a written contract has been entered into between Mr. Anthony L. Bleeker and Captain James Wright on the one hand, and the exile General Paez on the other, to reinstate the latter in power in Venezuela by force, and that Mr. Cornelius Vanderbilt is to supply transportation and arms and munitions of war for the expedition.

I do not know how authentic this information may be, but the statement seems to be such as to justify calling your attention to the subject. I have therefore to request you to investigate the subject, and, if necessary, to take every lawful step within the authority of the Executive to prevent the perpetration of such a foolish and criminal violation of the laws, sovereignty, and public honor of the United States.

I am, very respectfully,

C. CUSHING.

Hon. JNO. MCKEON,
United States District Attorney, New York.

Mr. Cushing, Attorney-General, to Mr. Marcy, Secretary of State.

DECEMBER 17, 1856.

SIR: I have received your letter of the 12th instant, and have addressed suitable instructions on the subject to the attorney of the United States for the southern district of New York.

I have the honor to be, very respectfully,

[610] *C. CUSHING.

Hon. W. L. MARCY,
Secretary of State.

Mr. Cushing, Attorney-General, to Mr. McKeon, district attorney.

ATTORNEY-GENERAL'S OFFICE, *December* 12, 1856.

Mr. MCKEON, *United States District Attorney, New York:*

Complaints have been made to the President of enlistments and expeditions at New York for military service in Nicaragua, in violation of law, and you will arrest and prosecute all such enlistments and expeditions. Full instructions by mail.

C. CUSHING.

[Similar dispatches were sent to district attorneys at New Orleans and other cities.]

Mr. McKeon, district attorney, to Mr. Vanderbilt, New York.

SOUTHERN DISTRICT OF NEW YORK,
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
December 18, 1856.

SIR: Information has reached the Department of State that arrangements are in train in this city for the purpose of a hostile military expedition against the republic of Venezuela. It is reported that you are to supply transportation, arms, and munitions of war for the expedition.

I have been instructed by the Attorney-General of the United States to investigate the subject, and deem it my duty to ask you what truth there is in the report as far as you are concerned. I will be pleased to receive from you such information in regard to the matter as it is in your power to impart to me. I ask this the more readily because
[611] I feel assured that you, *as a good citizen, would not willingly aid in the perpetration of such a criminal violation of the laws, sovereignty, and public honor of the United States.

Very respectfully,

JOHN MCKEON,
United States Attorney.

CORNELIUS VANDERBILT, Esq.,
New York.

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[612] *Message of the President of the United States, communicating, in compliance with the resolution of the Senate of January* 4, 1858, *the correspondence, instructions, and orders to the United States naval forces on the coast of Central America, connected with the arrest of Wm. Walker and his associates, at or near the port of San Juan de Nicaragua.* *(See Sen. Doc., 35th Congress, 1st session, Ex. Doc. No.* 13.*)*

To the Senate of the United States:

I herewith transmit to the Senate a report from the Secretary of the Navy, with the accompanying documents, containing the information called for by the resolution of the Senate of the 4th instant, requesting me "to communicate to the Senate the correspondence, instructions, and orders to the United States naval forces on the coast of Central America, connected with the arrest of William Walker and his associates," &c.

In submitting to the Senate the papers for which they have called, I deem it proper to make a few observations.

In capturing General Walker and his command after they had landed on the soil of Nicaragua, Commodore Paulding has, in my opinion,
[613] committed a grave error. It is quite *evident, however, from the communications herewith transmitted, that this was done from pure and patriotic motives, and in the sincere conviction that he was promoting the interest and vindicating the honor of his country. In regard to Nicaragua, she has sustained no injury by the act of Commodore Paulding. This has inured to her benefit, and relieved her from a dreaded invasion. She alone would have any right to complain of the violation of her territory; and it is quite certain she will never exercise this right. It unquestionably does not lie in the mouth of her invaders to complain in her name that she has been rescued by Commodore Paulding from their assaults. The error of this gallant officer consists in exceeding his instructions, and landing his sailors and marines in Nicaragua, whether with or without her consent, for the purpose of making war upon any military force whatever which he might find in the country, no matter from whence they came. This power certainly did not belong to him. Obedience to law and conformity to instructions are the best and safest guides for all officers, civil and military, and when they transcend
[614] these limits, and act upon their own *personal responsibility, evil consequences almost inevitably follow.

Under these circumstances, when Marshal Rynders presented himself at the State Department on the 29th ultimo, with General Walker in custody, the Secretary informed him "that the Executive Department of the Government did not recognize General Walker as a prisoner; that it had no directions to give concerning him, and that it is only through the action of the judiciary that he could be lawfully held in custody to answer any charges that might be brought against him."

In thus far disapproving the conduct of Commodore Paulding, no inference must be drawn that I am less determined than I have ever been to execute the neutrality laws of the United States. This is my imperative duty, and I shall continue to perform it by all the means which the Constitution and the laws have placed in my power. My opinion of the value and importance of these laws corresponds entirely with that expressed by Mr. Monroe in his message to Congress of December 7, 1819. That wise, prudent, and patriotic statesman says:

[615] It is of the highest importance to our national character, *and indispensable to the morality of our citizens, that all violations of our neutrality should be prevented. No door should be left open for the evasion of our laws, no opportunity afforded to any who may be disposed to take advantage of it, to compromit the interest or the honor of the nation.

The crime of setting on foot, or providing the means for, a military expedition within the United States, to make war against a foreign state with which we are at peace, is one of an aggravated and dangerous character, and early engaged the attention of Congress. Whether the Executive Government possesses any or what power under the Constitution, independently of Congress, to prevent or punish this and similar offenses against the law of nations, was a subject which engaged the attention of our most eminent statesmen in the time of the administration of General Washington, and on the occasion of the French revolution. The act of Congress of the 5th of June, 1794, fortunately removed all the difficulties on this question which had theretofore existed. The fifth and seventh sections of this act, which relate to the present question, are the same in substance with the sixth

[616] *and eighth sections of the act of April 20, 1818, and have now been in force for a period of more than sixty years.

The military expedition, rendered criminal by the act, must have its origin, must "begin" or be "set on foot" in the United States; but the great object of the law was to save foreign states, with whom we were at peace, from the ravages of these lawless expeditions proceeding from our shores. The seventh section alone, therefore, which simply defines the crime and its punishment, would have been inadequate to accomplish this purpose and enforce our international duties. In order to render the law effectual, it was necessary to prevent "the carrying on" of such expeditions to their consummation after they had succeeded in leaving our shores. This has been done effectually, and in clear and explicit language, by the authority given to the President, under the eighth section of the act, to employ the land and naval forces of the United States "for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States, against the territories or dominions of any [617] foreign *prince or state, or of any colony, district, or people with whom the United States are at peace."

For these reasons, had Commodore Paulding intercepted the steamer Fashion, with General Walker and command on board, at any period before they entered the port of San Juan de Nicaragua, and conducted them back to Mobile, this would have prevented them from "carrying on" the expedition, and have been not only a justifiable but a praiseworthy act.

The crime well deserves the punishment inflicted upon it by our laws. It violates the principles of Christianity, morality, and humanity, held sacred by all civilized nations, and by none more than by the people of the United States. Disguise it as we may, such a military expedition is an invitation to reckless and lawless men to enlist under the banner of any adventurer, to rob, plunder, and murder the unoffending citizens of neighboring states, who have never done them harm. It is a usurpation of the war-making power, which belongs alone to Congress; and the Government itself, at least in the estimation of the world, [618] *becomes an accomplice in the commission of this crime, unless it adopts all the means necessary to prevent and to punish it.

It would be far better, and more in accordance with the bold and manly character of our countrymen, for the Government itself to get up such expeditions, than to allow them to proceed under the command of irresponsible adventurers. We could then, at least, exercise some control over our own agents, and prevent them from burning down cities, and committing other acts of enormity of which we have read.

The avowed principle which lies at the foundation of the law of nations is contained in the divine command that, "all things whatsoever ye would that men should do to you, do ye even so to them." Tried by this unerring rule, we should be severely condemned if we shall not use our best exertions to arrest such expeditions against our feeble sister republic of Nicaragua. One thing is very certain. That people never existed who would call any other nation to a stricter account than we should ourselves for tolerating lawless expeditions from their [619] shores to make war upon any portion *of our territories. By tolerating such expeditions, we shall soon lose the high character which we have enjoyed ever since the days of Washington for the faithful performance of our international obligations and duties, and inspire distrust against us among the members of the great family of civilized nations.

But if motives of duty were not sufficient to restrain us from engaging in such lawless enterprises, our evident interest ought to dictate this policy. These expeditions are the most effectual mode of retarding American progress; although to promote this is the avowed object of the leaders and contributors in such undertakings.

It is, beyond question, the destiny of our race to spread themselves over the continent of North America, and this at no distant day, should events be permitted to take their natural course. The tide of emigrants will flow to the south, and nothing can eventually arrest its progress. If permitted to go there peacefully, Central America will soon contain an American population which will confer blessings and benefits as well upon the natives as their respective governments. Liberty under
[620] the restraint of law will pre*serve domestic peace, while the different transit routes across the Isthmus, in which we are so deeply interested, will have assured protection.

Nothing has retarded this happy condition of affairs so much as the unlawful expeditions which have been fitted out in the United States to make war upon the Central American States. Had one-half the number of American citizens who have miserably perished in the first disastrous expedition of General Walker settled in Nicaragua as peaceful emigrants, the object which we all desire would ere this have been in a great degree accomplished. These expeditions have caused the people of the Central American States to regard us with dread and suspicion. It is our true policy to remove this apprehension, and to convince them that we intend to do them good and not evil. We desire, as the leading power on this continent, to open and, if need be, to protect every transit route across the Isthmus, not only for our own benefit but that of the world, and thus open a free access to Central America, and through it to our Pacific possessions. This policy was commenced under
[621] favorable auspices, when *the expedition under the command of General Walker escaped from our territories and proceeded to Punta Arenas. Should another expedition of a similar character again evade the vigilance of our officers and proceed to Nicaragua, this would be fatal, at least for a season, to the peaceful settlement of these countries and to the policy of American progress. The truth is that no administration can successfully conduct the foreign affairs of the country in Central America, or anywhere else, if it is to be interfered with at every step by lawless military expeditions "set on foot" in the United States.

JAMES BUCHANAN.

WASHINGTON CITY, *January* 7, 1858.

[Inclosure No. 1.]

NAVY DEPARTMENT, *October* 2, 1857.

SIR: I am directed by the President to transmit to you, for your guidance, the accompanying circular, which he has caused to be issued from the State Department to various civil officers.

You will regard the instructions contained in it as addressed to yourself.

I am, respectfully, your obedient servant,

ISAAC TOUCEY.

[622] *Commander FREDERICK CHATARD,
Commanding United States sloop Saratoga,
Aspinwall, New Granada.

[A similar letter to the above was addressed to Commander Thatcher, commanding United States sloop Decatur, Panama, New Granada, and to the commandants of the navy-yards at Portsmouth, New Hampshire, New York, Boston, Philadelphia, Norfolk, Pensacola, and San Francisco.]

[Inclosure No. 2.]

DEPARTMENT OF STATE,
Washington, September 18, 1857.

SIR: From information received at this Department, there is reason to believe that lawless persons are now engaged within the limits of the United States in setting on foot and preparing the means for military expeditions, to be carried on against the territories of Mexico, Nicaragua and Costa Rica, republics with whom the United States are at peace, in direct violation of the sixth section of the act of Congress, approved 20th April, 1818. And under the eight section of the said act it is made lawful for the President, or such person as he shall empower, to employ the land and naval forces of the United States, and the militia thereof, "for the purpose of preventing the carrying on of any such expedition or enterprise from the territories
[623] *or jurisdiction of the United States." I am, therefore, directed by the President to call your attention to the subject, and to urge you to use all due diligence to avail yourself of all legitimate means at your command to enforce these and all other provisions of the said act of 20th April, 1818, against those who may be found to be engaged in setting on foot or preparing military expeditions against the territories of Mexico, Costa Rica, and Nicaragua, so manifestly prejudicial to the national character, and so injurious to the national interest. And you are also hereby instructed promptly to communicate to this Department the earliest information you may receive relative to such expeditions.

I am, sir, your obedient servant,

L. CASS.

[Inclosure No. 3.]

NAVY DEPARTMENT, *October* 3, 1857.

SIR: I am directed by the President to transmit to you for your guidance the accompanying circular, which he has caused to be issued from the State Department to various civil officers. You will regard
[624] the instructions contained in it as addressed to *yourself. A copy has also been sent to Commander Chatard, at San Juan del Norte, with similar instructions.

The Department has directed Lieutenant Almy, commanding the Fulton, to proceed Chiriqui, and report from there by letter to you as forming a part of the squadron under your command. Transmitted herewith for your information is a copy of his instructions.

Very respectfully, your obedient servant,

ISAAC TOUCEY.

Flag-Officer H. PAULDING, *U. S. N.*
Commanding Home Squadron, Aspinwall, New Granada.

[Inclosure C.]

UNITED STATES FLAG-SHIP WABASH,
Off San Juan del Norte, December 11, 1857.

SIR: This will be handed to you by General William Walker, who has given me his parole of honor that he will present it to you in person.

With the naval force of this squadron, I arrested General Walker on Punta Arenas, on the 8th instant, for a violation of the neutrality laws of the United States, he having set on foot in the United States an unlawful military organization to make war upon a people
[625] *with whom we are at peace, and was, at the time of his arrest, at the head of said organization in the act of making war, as above stated.

As marshal for the southern district of New York, I consign him to your custody.

I am, sir, yours, &c.,

H. PAULDING,
Flag-Officer Commanding United States Home Squadron.

ISAIAH RYNDERS, Esq.,
United States Marshal for the Southern District of New York.

[Inclosure No. 17.]

No. 142.] FLAG-SHIP WABASH,
Off Aspinwall, December 15, 1857.

SIR: My letter of the 12th (11th) instant informed the Department that I had broken up the camp of General Walker, at Punta Arenas, disarmed his lawless followers, and sent them to Norfolk in the Saratoga. The general came here with me, and will take passage in one of the steamers for New York, where he will present himself to the marshal of the district.

The Department being in possession of all the facts in relation to Walker's escape, with his followers, from the United States,
[626] *as well as the letters of Captain Chatard and Walker to me after he landed at Point Arenas, the merits of the whole question will, I presume, be fully comprehended.

I could not regard Walker and his followers in any other light than as outlaws who had escaped from the vigilance of the officers of the Government, and left our shores for the purpose of rapine and murder, and I saw no other way to vindicate the law and redeem the honor of our country than by disarming and sending them home. In doing so I am sensible of the responsibility that I have incurred, and confidently look to the Government for my justification.

Regarded in its true light, the case appears to me a clear one, the points few and strong.

Walker came to Point Arenas from the United States, having, in violation of law, set on foot a military organization to make war upon a people with whom we are at peace. He landed there with armed men and munitions of war in defiance of the guns of a ship of war placed there to prevent his landing.

[627] With nothing to show that he acted by *authority, he formed a camp, hoisted the Nicaraguan flag, called it the "headquarters of the army of Nicaragua," and signed himself the commander-in-chief.

With this pretension he claimed the right of a lawful general over a persons and things within sight of his flag. Without right or authorit he landed fifty men at the mouth of the river Colorado, seized the fo of Castillo, on the San Juan; captured steamers, and the goods of me chants in transit to the interior; killed men, and made prisoners of th peaceful inhabitants, sending to the harbor San Juan del Norte som thirty or forty men, women, and children in the steamer Morgan.

In doing these things without the show of authority they were guilt of rapine and murder, and must be regarded as outlaws and pirates They can have no claim to be regraded in any other light.

Humanity; as well as law and justice and national honor, demande the dispersion of these lawless men.

The remnant of the miserable beings who surrendered at Rivas wer conveyed in this ship last summer to New York, and their suffer
[628] ings are yet fresh in the memory of all *on board.

Besides the sufferings that would necessarily be inflicted upo an innocent and unoffending people, these lawless followers of Genera Walker, misguided and deceived into a career of crime, would doubt less have perished in Central America, or their mutilated and festering bodies have been brought back to their friends at the expense of thei country.

For the above reasons, which appear to my mind quite sufficient, I have disarmed and sent to the United States General William Walke and his outlawed and piratical followers for trial, or for whatever actio the Government in its wisdom may think proper to pursue.

Captain Ommanny, of Her Britannic Majesty's ship Brunswick, offered to co-operate with me in removing the party from Point Arenas, but as they were my countrymen, I deemed it proper to decline the participa tion of a foreign flag.

I am, sir, yours, &c., &c.,

H. PAULDING,
Flag-Officer, commanding home squadron.

Hon. ISAAC TOUCEY,
Secretary of the Navy, Washington, D. C.

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[629] **Mr. Kennedy, United States marshal, to Mr. Black, Attorney General.*

UNITED STATES MARSHAL'S OFFICE,
New Orleans, November 25, 1858.

SIR: Your letter of the 10th instant was not received by me until tw or three days after it was due. Having seen the reply of the Unite States attorney for this district to one of a similar character from you Department, in which he put you in possession of all the circumstance connected with the subject of your inquiry up to the date thereof, thought best to allow a few days to intervene between his said repl and mine, lest some new phase of the matter should arise worthy being communicated to you.

I now have the honor to state that on the 19th day of this month tw individuals, named McChesney and Dreaux, both connected with a bod designated as the Southern Emigrant Society, were arrested an brought before the grand jury of this district, and examined touchin the nature and objects of said society. Nothing having been elicite

from them which would be construed into an intent to violate our neutrality laws, the witnesses were discharged and the matter dropped.

Since then nothing has transpired to alter the complexion of the subject. You may rest assured, sir, of my zealous co-operation with the Government in maintaining the inviolability of the neutrality laws of the United States.

Very respectfully, &c.,

JOS. M. KENNEDY,
United States Marshal, eastern district Louisiana.

Hon. J. S. BLACK,
Attorney-General of the United States.

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[630] **Mr. Semmes, district attorney, to Mr. Black, Attorney-General.*

UNITED STATES ATTORNEY'S OFFICE,
New Orleans, Louisiana, December 27, 1858.

SIR: Your telegram under date 25th instant, stating "that all proper and necessary expenses incurred in the execution of the laws will of course be allowed," has been received.

I shall take no action involving expense unless circumstances imperatively require it, and then only after consultation with the marshal and collector.

Very respectfully,

THOS. J. SEMMES,
United States Attorney.

Hon. J. S. BLACK,
Attorney-General United States.

Mr. Miller, district attorney, to Mr. Black, Attorney-General.

OFFICE UNITED STATES ATTORNEY,
New Orleans, September 1, 1859.

SIR: Your letter of the 18th instant, in regard to a reported hostile expedition against Nicaragua, said to be now on foot in this district, and inclosing a copy of a previous letter on the same subject addressed to my predecessor, was duly received.

In this community no such report as the one alluded to by you has prevailed, and I am satisfied the rumors which have reached the Department are without foundation.

I am deeply impressed with the views expressed in your letter, and shall not fail to exert a watchful vigilance to detect and frustrate any attempted violations of our neutrality laws.

Very respectfully, your obedient servant,

HENRY C. MILLER,
United States Attorney.

Hon. J. S. BLACK,
Attorney-General.

[631] *Mr. Miller, district attorney, to Mr. Black, Attorney-General.*

OFFICE UNITED STATES ATTORNEY,
New Orleans, September 9, 1859.

SIR: Since my letter of the 1st in regard to a reported hostile expedition against Nicaragua, said to be in course of preparation here, reports have reached me that movements are in progress here, looking to a violation of the laws.

It is said that men are now being enlisted here for military service in Mexico, either for or against the existing government there, and in either event there would be an infraction of the laws of the United States.

My intelligence is too vague to permit of any action now, and I have contented myself with officially calling the attention of the marshal to the subject, who was previously on the alert, and I shall not fail to exert a strict vigilance in the premises. I deem it proper to make this communication, because when I last wrote not even a rumor of an unlawful enterprise prevailed here.

Very respectfully, your obedient servant,

HENRY C. MILLER,
United States Attorney.

Hon. J. S. BLACK,
Attorney-General.

Mr. Hatch, collector, to Mr. Buchanan, President.

CUSTOM-HOUSE, NEW ORLEANS,
Collector's Office, September 22, 1859.

SIR: Referring to my letter of yesterday's date, I have the honor to annex above two notices cut from the New Orleans Crescent, of this date, which go to strengthen the suspicion of an intended illegal expedition.

[632] *This H. Maury I presume to be the captain of the schooner Susan, which escaped from the United States authorities at Mobile, in the month of December last, and met with a disastrous shipwreck in the Bay of Honduras shortly after.

I have made diligent inquiries about 119 Exchange Place, and learn that it is a room or alley connected with a large boarding-house fronting on another street, in which General Walker now sojourns.

If the expedition is really to start from Mobile, then the cutter Washington ought to remain under the control of the collector of that district; if, on the other hand, this advertisement is only a blind, and the expedition is to depart from the islands before referred to, as my informant still believes, then all the force the Government intends to employ to arrest this movement should be placed at such ready disposal as circumstances may justify from time to time; and further, if the departure is to be made in a steam-vessel, it may require a vessel of this kind to prevent it.

Waiting any instructions or information you may be pleased to communicate, I have the honor to be your obedient servant,

F. H. HATCH,
Collector.

JAMES BUCHANAN,
President of the United States, Washington, D. C.

[633] *Mr. Hatch, collector, to Mr. Buchanan, President.*

CUSTOM-HOUSE, NEW ORLEANS,
Collector's Office, September 27, 1859.

SIR: I have had the honor of reading a letter addressed by you to the Hon. John Slidell, with the accompanying communication from Isaac S. McMakin, esq., United States consul at Acapulco, and now address you at the suggestion of Mr. Slidell, on the subject of the contemplated filibuster expedition of General Walker. The letters of Attorney-General Black to the United States district attorney and United States marshal of this district were shown to me by those officers at the time they were received by them, and my co-operation to prevent the fitting out and departure of such expedition was solicited. This assurance was promptly given, and detective officers of this department have since then been diligently employed in endeavoring to ferret out the existence of such parties, and the period of their intended departure.

The facts reported to me are the arrival of Walker in the city, and the rumor that an expedition is in the progress of preparation intended for some part of Central America, and expected to depart from the 1st to the 20th proximo. My informant thinks the point of departure will be from some of the islands on the coast lying between the mouth of the Mississippi and Mobile Point. Since the information communicated to me by the United States attorney and United States
[634] marshal, I have used all the means *in my power to detect the existence of and prevent the departure of such expedition, and am not aware that any effective measures have been taken, except such as have emanated from this office. I beg to assure you that I shall use every exertion to make the department under my control as efficient in carrying out the wishes of the Government as it proved itself on a similar occasion two years since.

In the performance of this service, I shall not only act in conformity with my duty as a public officer, but in obedience to my sentiments as a citizen and a man.

In order the more effectually to carry out your wishes, I respectfully suggest that the revenue cutter Washington, now stationed at Mobile, be placed at my disposal, with entire authority to direct the movements of that vessel, with such instructions and information as you may deem advisable to communicate.

I have the honor to be, &c.,

F. H. HATCH,
Collector.

JAMES BUCHANAN,
President of the United States.

Mr. Miller, district attorney, to Mr. Black, Attorney-General.

[Telegram.]

NEW ORLEANS, *October* 7, 1859.

Hon. J. S. BLACK, *Attorney-General:*

The marshal telegraphs the filibusters are captured. Maury and Anderson are among them. They surrendered without resistance.

HENRY C. MILLER.

[635] *Mr. Miller, district attorney, to Mr. Black, Attorney-General.*

[Telegram.]

NEW ORLEANS, *October* 8, 1859.

Hon. J. S. BLACK, *Attorney-General:*

Four of the leaders of the Nicaragua expedition arraigned this morning gave bail, $3,000 each. I insisted on $5,000. Marshal has about seventy men in barracks below. I have told him under his instructions he was to keep these men until further proceedings, and to use troops if necessary. I think the expedition is frustrated, and that prosecution of leaders alone is most judicious. If you sanction, will have these seventy subordinates discharged on their own recognizances. Please give your views as early as possible to-day.

HENRY C. MILLER.

Mr. Kennedy, United States marshal, to Mr. Black, Attorney-General.

[Telegram.]

NEW ORLEANS, *October* 8, 1859.

Hon. J. S. BLACK, *Attorney-General:*

I returned this morning from Southwest Pass with about seventy-five prisoners, which I left with two of my officers at the barracks, the place designated by the collector, and four of the leaders, Anderson, Maury, Fayssoux, and Scott, who came with me to the city to appear before the commissioner. Their arrest was accomplished without the military, which was kept out of sight, they declaring that they surrendered to the civil power alone. When they perceived
[636] the troops on board the steamer, their *excitement was uncontrollable, and if I had not requested Captain Ricketts to take his command on another steamer lying alongside, a scene of violence and slaughter would have been the inevitable consequence, as these men were generally armed to the teeth. I may require the steamer for a few days for different purposes. Shall I keep her? It would be imprudent (such is also the opinion of Captain Ricketts) to set a military guard over these men, who have many sympathisers here, and I have applied in vain for assistance to the chief of police. Will you alleviate my immense responsibility in this matter, by suggesting some means by which I can secure their custody.

J. M. KENNEDY.
United States Marshal.

Mr. Miller, district attorney, to Mr. Black, Attorney-General.

OFFICE UNITED STATES ATTORNEY,
New Orleans, October 10, 1859.

SIR: I wrote you yesterday detailing proceedings had in connection with the pending prosecutions for alleged violations of the neutrality act of 1818.

Since that time, evidences have multiplied against the steamship Philadelphia. She had on board munitions of war, and moreover circumstances indicate that after her detention by the collector attempts were made to destroy or make way with that portion of her cargo. We are of the opinion that when 400 tons of coal are taken out of her

further discoveries will be made. She will be seized this morning and libelled, under the third section of the act of 1818, and as I write the collector officially informs me of the seizure and instructed proceedings.

[637] The plan of the unlawful expedition I think, now, *is clearly and unmistakably revealed, and the suspicions against the Philadelphia have ripened into convictions. I am now actively employed in the measures incident to obtaining proof, which will be needed in the prosecution of the leaders of the Nicaragua expedition, and maintaining the libel against the Philadelphia. I am strongly of opinion that parties in New York are privy to these unlawful designs.

I ought to have reported to you yesterday, that, under your instructions per telegraph, I employed the tow-boat P. F. Kimball to carry down and bring back the troops, and discharged her when that service was completed.

I inclose copies of letters, which are a part of the history of the arrest of Maury's party by the marshal. They require no comment, and the matters therein referred to shall receive due attention.

In the policy I have conceived for the prosecution of these offenders I distinguish between the prosecution of the leaders and their deluded and miserable followers, who are perfectly harmless without the aid of mischievous men to guide them, and I shall use my discretion about their prosecution, subject, of course, to instructions, if it should be necessary to give them.

The collector and myself share in the opinion that the expedition from here at least is frustrated, and the only regret we experience proceeds from the apparent contempt of the law which the people were enabled to manifest.

[638] I shall continue to furnish you such important in*formation as I deem interesting to the Government. The newspapers here are disaffected to the prosecution of these offenders, and I need not add that their accounts are prejudiced, ill-natured, and untrue.

Very respectfully, your obedient servant,

HENRY C. MILLER,
United States Attorney.

Hon. J. S. BLACK,
Attorney-General.

P. S.—Judge McCaleb, United States district judge, will be here for the examination of the accused.

Mr. Miller, district attorney, to Mr. Black, Attorney-General.

OFFICE OF UNITED STATES ATTORNEY,
New Orleans, October 20, 1859.

SIR: I transmit you the newspaper accounts of the examination, before United States Commissioner Lusher, of the leaders of the late Nicaragua expedition.

The newspapers here are prejudiced in favor of unlawful expeditions, and their prejudices naturally infuse themselves into their columns. I have selected the accounts transmitted as the most truthful, and from which you can gather the prominent features of the evidence.

With regard to an examination before a commissioner, under the circumstances I was opposed to it. I had requested his honor Judge McCaleb, of the United States district court, to be present, and he had

complied, and I contemplated laying an indictment before the grand jury as soon as the judge could give his charge. This charge was given yesterday, and is contained in one of the newpapers sent to you,
[639] (the Picayune of this date,) and the grand jury are *now investigating the subject. Whatever is the result before the commissioner, I shall not deem my duty performed until all the evidence which is attainable is laid before the jury and they have passed on it.

The evidence necessary to make legal proof against the accused is difficult, and I fear cannot be obtained. This expedition was frustrated by intercepting its means and arresting by judicial process the men composing it before it had reached that point when its real character would have been made manifest and easy of proof. The proof adduced is ample to produce moral conviction, but so guarded have been the movements of those composing it, and so secret the agencies by which the real objects of the expedition have been controlled, that it seems impossible to bring proof necessary to fasten guilt on the motley assemblage of unarmed and ill-provided men who were arrested and brought back to this city from the passes of the Mississippi River, whither they had gone evidently to await the vessel provided to carry them to their ultimate destination. That this vessel was intended to be the steamship Philadelphia, the circumstances strongly indicate, yet in the extended and searching examination, both before the commissioner and the grand jury, no direct proof has been elicited to connect the assemblage of men at the passes with the steamship Philadelphia.

The witnesses who ought to know the connecting facts have
[640] either perjured themselves, or the influences which * have created the relation sought to be established are too deeply hidden to be detected. My labors in the matter are not yet ended, and will not cease until every channel of information is exhausted before the grand jury.

I call your particular attention to the evidence as regards arms and munitions of war being placed on the Philadelphia in New York, and under circumstances that indicate it was done for no legitimate purposes.

I have already apprised you I have libelled the Philadelphia. The developments in the evidence indicate that judicial investigation in New York would be appropriate.

The measures adopted here have had a most salutary effect. They will deter the repetition of these abortive attempts, as silly as they are illegal.

I directed the owner of the boat chartered by me to take down the troops to present his bill, and, when done, I shall request you to provide for its payment.

I am, sir, very respectfully, your obedient servant,

HENRY C. MILLER,
United States Attorney.

Hon. J. S. BLACK,
Attorney-General.

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[641] **Message of the President of the United States, transmitting reports from the several heads of departments relative to the subject of the resolution of the Senate of the 23d of May as to alleged revolutionary movements in Cuba.*

To the Senate of the United States:

I transmit to the Senate herewith reports from the several heads of departments, which contain all the information in the possession of the

Executive relative to the subject of the resolution of the 23d instant, (May.)

No information has been received establishing the existence of any revolutionary movement in the island of Cuba among the inhabitants of that island. The correspondence submitted discloses, however, the fact that repeated attempts have been made, under the direction of foreigners enjoying the hospitality of this country, to get up armed expeditions in the United States for the purpose of invading Cuba. It will be seen by that correspondence that this Government has been faithful in the discharge of its treaty obligations with Spain, and in the execution of the acts of Congress which have for their object the main-
[642] tenance, in this regard, of the peace *and honor of this country.

Z. TAYLOR.

WASHINGTON, *June* 1, 1851.

John M. Clayton, Secretary of State, to the President of the United States.

DEPARTMENT OF STATE,
Washington, May 31, 1850

The Secretary of State, to whom has been referred the resolution of the Senate of the 23d May, requesting the President of the United States "to inform the Senate whether any, and what, information has been received by the Executive Department respecting an alleged revolutionary movement in the island of Cuba, and to communicate to the Senate copies of all correspondence and orders relative thereto," has the honor to report to the President the accompanying copies of papers, which contain all the information filed in this Department relating to the subject of that resolution, and the armed expeditions which have, from time to time, been set on foot in the United States for the invasion of Cuba.

Respectfully submitted.

JOHN M. CLAYTON.

Mr. Clayton, Secretary of State, to Logan Hunton, esq., United States attorney for east district of Louisiana, New Orleans.

DEPARTMENT OF STATE,
Washington, August 8, 1849.

[643] *SIR: Information has been received at this Department that an armed expedition is about to be fitted out at New Orleans, but I have as yet no means of learning with certainty the destination of this expedition. It is believed that certain persons are, at this time, engaged in enlisting and drilling soldiers, at or near New Orleans. The soldiers appear not to have been intrusted with the secret so far as to disclose the place to which they are going, though they say they are to receive high pay, and are to be engaged in active hostilities with some foreign power. Rumors are afloat that their destination is Yucatan, to engage in the contest between the Yucatenos and the Indians; and Colonel White, who was formerly engaged in a similar expedition to Yucatan, is pointed out as one of the leaders. Other rumors are, that their object is either San Domingo or San Francisco. I do not myself, as yet, credit

these rumors, but fear there is reason to suspect that their real destination is Cuba. It is said that eight hundred men are to embark from Cat Island, or some other point near New Orleans, on board the steamer Fanny, between the 20th and 25th of this month; that
[644] *Colonel Biscoe, of New Orleans, is concerned in the enterprise; and that Whitney & Co., of New Orleans, have on hand $250,000 to aid in fitting out the expedition. It is also said that Charles C. Campbell, of New Orleans, (who, if my informant be right, is in some way connected with that firm,) is to be one of the officers. I give these statements to you as I have received them, and have no means of knowing their truth.

By examining our law of the 20th April, 1818, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," you will see that it is provided in the sixth section "that, if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are (at) peace, every person so offending, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned
[645] *not more than three years."

The President is anxious to maintain, with fidelity, the treaties of the United States with all foreign powers; and he will not, for any consideration, consent to disregard our obligations, on the faithful discharge of which depends the honor as well as the peace of the country. He is now desirous to ascertain through your instrumentality, if possible, how far the above-stated rumors, or any of them, may be entitled to credit, and what evidence you can adduce to justify him in interfering to prevent a violation of our laws. Should you find the statements herein referred to, as to the fitting out of an expedition against Cuba, substantiated by credible testimony, he wishes you to proceed, by every means in your power, to enforce the laws and to prevent the violation of our treaty with Spain. At your earliest convenience, report the result of your proceedings and investigations to this Department.

Your telegraphic dispatch of the 3d of August was received here on the 6th. Accept my thanks for your prompt attention.

I am, with great respect, your obedient servant,

JOHN M. CLAYTON.

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[646] **Mr. Clayton, Secretary of State, to Don A. C. de la Barca.*

DEPARTMENT OF STATE,
Washington, August 9, 1849.

MY DEAR SIR: Business of great importance to the interests of your government requires your immediate presence here; and I hope to see you at Washington as soon after the receipt of this note as your convenience will possibly allow you to repair hither.

Very respectfully, &c., &c.,

JOHN M. CLAYTON.

Don A. CALDERON DE LA BARCA, *&c., &c., &c.*,
Glenn Cove, Long Island.

Mr. Clayton, Secretary of State, to Mr. Hall, district attorney,

[Confidential.]

DEPARTMENT OF STATE,
Washington, August 10, 1849.

SIR: Information has been received at this Department that an armed expedition is about to be fitted out in the United States with an intention to invade the island of Cuba, and that certain persons are at this time engaged in enlisting and drilling soldiers at several points on our Atlantic coast, one of which is the city of New York, to be employed in this hostile enterprise, in violation of our laws and our conventional obligations. The President, anxious to maintain the honor and
[647] peace of the country by the faithful discharge of his *duties toward a friendly nation, directs me to call your attention to this apprehended infraction of our laws, and to invite you to institute an inquiry with the view of ascertaining whether any act in violation of those laws has been committed or is designed, and the number and names of any individuals in your city who may be found to be implicated in this undertaking. The collector of the customs, the mayor and other local authorities of the city, will doubtless cheerfully aid you in investigating this affair. Should you find the statement above referred to, as to the organization of an expedition against Cuba, substantiated by credible testimony, you will proceed by every means in your power to enforce the laws, and prevent the violation of our treaty with Spain. At your earliest convenience you will report the result of your proceedings and investigations to this Department.

I have the honor to be, very respectfully, sir, yours, &c.,
JOHN M. CLAYTON.

[Same to J. W. Ashmead, esq., United States district attorney, Philadelphia; W. L. Marshall, esq., United States district attorney, Baltimore; George Lunt, esq., United States district attorney, Boston.

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[648] **By the President of the United States.*

A PROCLAMATION.

There is reason to believe that an armed expedition is about to be fitted out in the United States with an intention to invade the island of Cuba, or some of the provinces of Mexico. The best information which the Executive has been able to obtain points to the island of Cuba as the object of this expedition. It is the duty of this Government to observe the faith of treaties, and to prevent any aggression by our citizens upon the territories of friendly nations. I have, therefore, thought it necessary and proper to issue this proclamation, to warn all citizens of the United States who shall connect themselves with an enterprise so grossly in violation of our laws and our treaty obligations, that they will thereby subject themselves to the heavy penalties denounced against them by our acts of Congress, and will forfeit their claim to the protection of their country. No such persons must expect the interference of this Government in any form on their behalf, no matter to what extremities they may be reduced in consequence of their conduct.
[649] An enterprise to invade the terri*tories of a friendly nation, set on

foot and prosecuted within the limits of the United States, is in the highest degree criminal, as tending to endanger the peace and compromit the honor of this nation; and, therefore, I exhort all good citizens, as they regard our national reputation, as they respect their own laws and the laws of nations, as they value the blessings of peace and the welfare of their country, to discountenance and prevent, by all lawful means, any such enterprise; and I call upon every officer of this Government, civil or military, to use all efforts in his power to arrest for trial and punishment every such offender against the laws providing for the performance of our sacred obligations to friendly powers.

Given under my hand the eleventh day of August, in the year of our Lord one thousand eight hundred and forty-nine, and the seventy-fourth of the Independence of the United States.

Z. TAYLOR.

By the President:
J. M. CLAYTON,
Secretary of State.
AUGUST 11, 1849.

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[650] **Mr. Clayton, Secretary of State, to Don A. Calderon de la Barca.*

DEPARTMENT OF STATE,
Washington, August 17, 1849.

Don A. CALDERON DE LA BARCA, *&c., &c., &c.:*

The undersigned, Secretary of State, having had the satisfaction of a full and unreserved conversation with his excellency the envoy extraordinary and minister plenipotentiary of Her Catholic Majesty near this Government, has now the honor to acknowledge the receipt of his excellency's note of the 13th instant, on the subject of the designs of certain persons in this country to aid and abet in an alleged enterprise to disturb the tranquillity of the island of Cuba. That the Government of the United States wholly discountenances and condemns the designs referred to, and that it will earnestly and in good faith do all that lies within its power to defeat those designs, will not be doubted by the Spanish minister, or by the government which he so zealously and faithfully represents. The President's views upon the subject have been most frankly and sincerely imparted and explained to Mr. Calderon on various occasions. They have been placed in possession, also, of the new minister, now on his way to Madrid, who has been authorized and instructed to omit no proper occasion to represent them to the government of Spain.

Mr. Calderon may rest assured that strict watch will be kept over
[651] any movements which may *be attempted to be made, within the United States, by any of their citizens against the island of Cuba. Active and prompt measures, as Mr. Calderon well knows, have already been adopted by the President; and no further measures that may become expedient or necessary to prevent the violation of our treaty with Spain will be omitted by him. The proclamation of the Executive of the 11th instant is before the world, and the undersigned takes this occasion to communicate to Mr. Calderon an official copy of that instrument, to be submitted to his government, as an earnest and evidence of this Government's profound respect for Her Catholic Majesty, their solemn purpose to observe the faith of treaties, and their sense of the sacred obligations due to a friendly power.

The undersigned avails himself of this opportunity to renew to Mr. Calderon the assurance of his distinguished consideration.

JOHN M. CLAYTON.

Mr. Clayton, Secretary of State, to the district attorney of Alabama.

[Confidential.—Telegram.]

DEPARTMENT OF STATE,
Washington, August 23, 1849.

The UNITED STATES DISTRICT ATTORNEY,
Mobile, Alabama:

SIR: The commander of the garrison at the fort has been in-
[652] structed by the War Department to advise and *co-operate with you in regard to the best means of arresting the progress of all persons within your district engaged in the expedition against Cuba. The President's proclamation and the act of 20th April, 1818, contain all the instructions which it is necessary for me to give you.

Respectfully, yours,

JOHN M. CLAYTON.

Mr. Clayton, Secretary of State, to Mr. Hall, district attorney.

[Confidential.—Telegram.]

DEPARTMENT OF STATE,
Washington, September 6, 1849.

J. PRESCOTT HALL, Esq.,
United States District Attorney, New York:

SIR: Your attention is again called to your instructions respecting the expedition against Cuba. Arrest any vessel engaged in it. We learn here that they are about to sail.

Yours, respectfully,

J. M. CLAYTON.

Mr. Clayton, Secretary of State, to Mr. Hall, district attorney.

[Confidential.—Telegram.]

DEPARTMENT OF STATE,
Washington, September 6, 1849.

J. PRESCOTT HALL, Esq.,
United States District Attorney, New York:

[653] DEAR SIR: In answer to yours, just received, I have to say, *arrest any man belonging to the Cuba expedition, against whom you have what you deem to be sufficient or reasonable evidence.

J. M. CLAYTON.

Mr. Clayton, Secretary of State, to Mr. Hall, district attorney.

[Confidential.—Telegram.]

DEPARTMENT OF STATE,
Washington, September 7, 1849.

J. PRESCOTT HALL, Esq.,
United States District Attorney, New York:

SIR: Act according to your own discretion in the case of * * *; and the vessels also. Break up the enterprise—that is the great object. If

the Government had no other motive, it is all-important to save the lives of the ignorant dupes of the project. Their fate in Cuba would be most disastrous. No vindictive proceedings are desirable, in my judgment, after the enterprise is broken up. * * *

Very respectfully, yours,

J. M. CLAYTON.

Mr. Hall, district attorney, to Mr. Clayton, Secretary of State.

SOUTHERN DISTRICT OF NEW YORK,
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
September 8, 1849.

SIR: In obedience to your orders, directing me to "arrest any
[654] vessel engaged in the expedition against Cuba," *I caused the Sea-Gull and New Orleans to be detained by the naval forces of the United States, under which power they are now held.

I could not discover anything in the act of 1818 which could speedily effectuate the object you had in view, except the eighth section; and I hope the power therein conferred upon the President, to employ the "land or naval forces" in such an emergency, will be found clear to justify our acts.

Under this conviction, I called upon Captain McKeever, commandant of the navy-yard at Brooklyn, for a force adequate to make seizures; and he thereupon detailed four officers and fifty men for the particular service in view. With this force, the marshal of the district, by my order, proceeded to the quarantine-grounds in a steamer, took possession of the Sea-Gull, (a vessel of considerable size, having a propeller as auxiliary to her sails,) brought her up to the navy-yard, and placed her under the guns of the North Carolina, where she now lies. He then, by a like order from me, placed an officer with a small body of marines on board the New Orleans, (a large sea-going steamer, lying at Corlears' Hook,) to detain her in harbor until further orders.

I did not take possession of the Florida, as she was in no respect
ready for sea, and because I thought the seizures already made
[655] would be sufficient to ac*complish all your purposes.

Since these arrests have been made, I have been called upon by the owners and agents of the Sea Gull and New Orleans, in relation to this matter, and they have very frankly admitted all the facts necessary to justify our proceedings.

With regard to the Sea Gull, she is to discharge her cargo, (which consists entirely of arms and munitions of war,) under the supervision of a proper authority, and her owner will give bond not to violate any law of the United States in relation to our neutrality. Upon these terms, and upon a solemn assurance that the expedition is effectually broken up and abandoned, I shall restore this vessel to Mr. Cole.

With regard to the New Orleans, she was under a charter-party, fair enough on its face, but secretly she was intended for the use of the expedition, and of this there is ample proof.

The seizures, however, have broken up their plans, and the charter-party has been abandoned on all sides.

The owners will stipulate, in any form I may require, that she shall not violate any act of Congress, and put her into the legitimate business for which she was constructed.

I shall, however, leave a marine officer on board of each vessel until the expedition is fairly and fully dispersed.

[656] *With regard to * * I shall leave him for the present, as he now is under bail to appear when called for; having the assurances and pledges of his friend that all persons engaged in the expedition will leave the city without delay.

I hope these conclusions will meet your approbation; and if not, you have merely to give me additional instructions, which will be implicitly followed.

In this matter I have to say, that to Colonel Crane and Captain McKeever I am indebted for the prompt manner in which they met my requisitions, while the marshal in person, without hesitation, executed all my instructions with entire propriety.

I have not deemed it necessary to go minutely into details, because I suppose that you have received them all from * * * who has a clear knowledge of all the facts.

Such expenses as have been incurred will be defrayed by the marshal and charged in his accounts.

With great respect, your obedient servant,

J. PRESCOTT HALL,
United States Attorney.

Hon. JOHN M. CLAYTON,
Secretary of State, Washington.

Mr. Clayton, Secretary of State, to Mr. Hall, district attorney.

DEPARTMENT OF STATE,
Washington, September 19, 1849.

[657] *J. PRESCOTT HALL, Esq.,
United States District Attorney
for the Southern District of New York.

SIR: In acknowledging the receipt of your letter of the 15th instant, it is due to you to say, that the President highly approves of the prompt, energetic, and judicious manner in which you have executed all the instructions of this Department, touching the late attempt on the part of some of our misguided citizens, who were concerned in a mischievous and illegal project for the invasion of the island of Cuba. To this expression from the President I have great pleasure in adding this Department's unqualified approbation of your official conduct.

I am, sir, with great respect, your obedient servant,

JOHN M. CLAYTON.

Mr. Sewell to Mr. Clayton, Secretary of State.

[Extract.]

SANTIAGO DE CUBA, *October* 25, 1849.

Although it may not be strictly within my prescribed sphere of duty, allow me to say that the expected invasion of Cuba has made a profound impression here, and that the authorities and people are loud in their grateful applause of the Government at Washington for arresting it; and though there is much less revolutionary feeling here than in other sections of the island, and if not an attachment, at least an almost uni-

versal subordination to the existing government, yet they give evi-
[658] dence of serious *apprehension in regard to its security or ability to resist a well-organized expedition.

I have the honor, &c.,

THOMAS SEWELL.

Hon. JOHN M. CLAYTON,
Secretary of State.

Mr. Clayton, Secretary of State, to Don A. Calderon de la Barca.

DEPARTMENT OF STATE,
Washington, January 22, 1850.

Don A. CALDERON DE LA BARCA, *&c., &c., &c.:*

The undersigned, Secretary of State of the United States, acknowledges the receipt of Mr. Calderon's note of the 19th instant, calling his attention to renewed designs upon the island of Cuba and desiring the intervention of the American Government to frustrate and to suppress them. Mr. Calderon's note has been laid before the President, by whose direction the undersigned immediately addressed instructions to the United States district attorneys for New York, New Orleans, and Washington, a copy of which, for the satisfaction of Mr. Calderon and of his government, the undersigned has now the honor to communicate.

The undersigned avails himself of this occasion to renew to Mr. Calderon the assurance of his distinguished consideration.

JOHN M. CLAYTON.

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[659] **Mr. Clayton, Secretary of State, to Mr. Hunton, district attorney.*

DEPARTMENT OF STATE,
Washington, January 22, 1850.

SIR: The minister of Spain residing in this city, under date of the 19th instant, has again invoked the attention of the Executive to probable designs against the island of Cuba, cherished by persons in the United States, of whom and of whose schemes he has received intelligence through channels which he conceives to be worthy of credit. Besides the organization of juntas, and their secret introduction into Cuba of paper inciting the inhabitants to revolt, they are said to have issued bonds payable on the rents of the island, in order to raise money for the purpose of recruiting men; and that bodies of men are actually exercising themselves in the use of arms, holding meetings and clubs in New York, New Orleans, and other places, and that the same are also forming plans for making use of the steamers which touch at Havana on their way to Chagres.

In view of these reports of renewed attempts against Cuba, I am directed by the President to call your special attention to the subject, and to instruct you to keep a vigilant watch upon all movements of the
[660] kind indicated, with a view to detect and to bring to punishment *the individuals and combination of individuals who may be found concerned in any overt act, in violation of the act of Congress of April, 1818, intended to disturb the tranquillity of Cuba.

The President, as in duty bound, will exercise all the powers with which he is invested, to prevent aggressions by our own people upon the territories of friendly nations, and he expects you to use every effort to detect, and to arrest, for trial and punishment, all offenders engaged in any armed expedition prohibited by our laws.

I am, sir, very respectfully, your obedient servant,

JOHN M. CLAYTON.

LOGAN HUNTON, Esq.,
United States District Attorney
for the Eastern District of Louisiana, New Orleans.

[Like circulars sent to J. Prescott Hall, esq., United States district attorney, southern district of New York, to Philip R. Fendall, esq., United States district attorney, Washington, D. C., each inclosing a copy of Mr. Calderon's note.]

Mr. Clayton, Secretary of State, to Don A. Calderon de la Barca.

DEPARTMENT OF STATE,
Washington, May 18, 1850.

SIR: I hasten to acknowledge the receipt of the two notes which you addressed to me on the 16th instant. They commanded my prompt and earnest attention, and I have now the honor to place in your hands a copy of the instructions which I caused to be sent to the district attorney of the United States for the southern district of New York, upon the
661] matters to *which those notes relate. These instructions were accompanied by a copy of your notes. You are not ignorant of the nature and scope of the instructions which that officer, and others of his class, exercising similar functions within other districts of the United States, have from time to time received from their Government. You are fully aware, indeed, that this Government has faithfully used its best exertions to arrest and put down former attempted disturbances, as well as to obtain, with the same object, information concerning the arming and equipping of the expedition said to have recently sailed to Cuba.

In immediate reply to your notes, now before me, I have to say that, although no official intelligence has reached the Department upon this subject, the President is well satisfied from other sources of information that certain foreigners within our limits have abused the hospitality of this country; and also that a considerable number of American citizens have really embarked with them, upon some clandestine expedition, in violation of the laws and treaties of the United States. It is true that, within the last three months, an unusual number of passports have been sought and obtained at this office by individuals alleging that they were about to proceed to California and Oregon. No means existed of detecting their real purpose, except through the United States officers at the various ports of embarkation, and these officers having unfor-
662] tunately failed to furnish any *information on the subject, it is proper that inquiries should be instituted into the conduct of such of them as might be supposed to be cognizant of the intended invasion, and yet failed to give notice of it to their own Government.

It is not possible for us to ascertain the number of persons engaged in the expedition, nor the place of their certain destination. No individual, however, enjoying the confidence in any degree of this Government, is either known or believed to be engaged in it. It is represented that

most of those conjectured to be so concerned, have quitted the country from different ports of the United States in the capacity of private citizens, proceeding ostensibly, as has been before remarked, to California and Oregon; and this without any demonstration on their part of arms and munitions of war, or any other evidences by means of which their presumed ulterior purposes could have been discovered. It is, however, quite superfluous for me to repeat to you, sir, who have so ably and perseveringly co-operated with me in efforts to detect and suppress real or suspected expeditions of this character, that those who may have embarked in them have no sympathy or countenance whatever from this Government, and that the principles of the proclamation which the President issued last summer, on a similar occasion, are still adhered to by him with inflexible integrity. But it is important that I should now impart to you certain information, which will, I trust,

[663] tend to *relieve the natural anxiety of your mind, caused by my verbal communication to you of that which I had learned unofficially of the sailing of the expedition now in question. In anticipation of such a possible emergency as might require their presence on the coast of Cuba, three American vessels of war from the squadron on the West India station must have made their appearance in the ports and harbors of that island, between the 7th and 12th instant, as we believe. They have full instructions authorizing them to prevent the landing of any of their countrymen who may be proceeding under the American flag to the invasion of Cuba. Further, two other war ships of great force and speed, one of which is the fine steam-frigate Saranac, were ordered for the same purpose to the coast of Cuba—the Saranac a few hours after credible evidence had been submitted to the President in reference to the intended invasion.

I avail myself of this occasion to reiterate to you the assurances of my distinguished consideration.

JOHN M. CLAYTON.

Don A. Calderon de la Barca, *&c.*, *&c.* *&c.*

Mr. Clayton, Secretary of State, to Mr. Hall, district attorney.

Department of State,
Washington, May 17, 1850.

[664] *Sir: Again it becomes my duty to call your special attention to alleged attempts on the part of certain individuals in New York and elsewhere, who appear to be actively engaged in organizing and encouraging expeditions for the avowed or presumed object of invading the Spanish possessions in the West Indies.

From the inclosed copies of two notes addressed to this Department by the minister of Spain, on the 16th instant, you will perceive that his alarm seems to be based upon overt acts which require the prompt and stern interposition of this Government. The entire success of your former exertions to suppress similar attempts, under the instructions of the President, afford a sufficient guarantee that your vigilance has not relaxed, and that you will omit no means which the law supplies, and our good faith to a power with which we are and desire to remain on the most friendly terms demands, to put an end to the illegal movements here indicated, as well as to all others intended and calculated

to violate our obligations toward Spain. Particular instructions on this subject are not deemed necessary; it is enough to enjoin upon you a rigid enforcement of the law, not only as a duty to Spain, but also in mercy to such of our deluded citizens as may have unfortunately connected themselves with an enterprise criminal in its nature, and likely to result in fatal consequences to all concerned.

I am, sir, respectfully, your obedient servant,

JOHN M. CLAYTON.

J. PRESCOTT HALL, Esq.,
United States District Attorney
for the Southern District of New York, New York City.

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[665] **Mr. Hall, district attorney, to Mr. Clayton, Secretary of State.*

SOUTHERN DISTRICT OF NEW YORK,
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
May 20, 1850.

SIR: Your letter of the 17th of May, inclosing two communications from the Spanish minister to the State Department, in relation to expeditions against Cuba, was duly received, and its injunctions will be carefully observed.

I am quite sure that there has been no armament made or fitted out in New York, which could come within any section of the neutrality act of 1818, or authorize official interference with the movements of any individuals or associations, although there may be such here as have ulterior objects in view of an unlawful character.

If, however, I can discover any movement in this district hostile to Spain or her colonies, I shall not hesitate to carry out your instructions by the exercise of any power confided by Congress either to the President or the law-officers of the United States.

With very great respect, your obedient servant,

J. PRESCOTT HALL,
United States Attorney.

Hon. JOHN M. CLAYTON,
Secretary of State.

Mr. Hall, district attorney, to Mr. Clayton, Secretary of State.

SOUTHERN DISTRICT OF NEW YORK,
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
May 25, 1850—half-past 3 p. m.

[666] SIR: The Spanish consul is in my office, and, upon *an affidavit made by him, I have just issued a warrant for the arrest of M. T. Tolon.

Your obedient servant,

J. PRESCOTT HALL,
United States Attorney.

P. S.—Will the President authorize me to act under the 8th section, in order to seize and detain munitions of war intended to be used in aid of the Cuban expedition?

Mr. Clayton, Secretary of State, to Mr. Williams, district attorney.

[Per telegraph.]

DEPARTMENT OF STATE,
May 25, 1850.

HENRY WILLIAMS, Esq.,
United States District Attorney, Savannah, Georgia:

Proceed according to law to have General Lopez arrested for a violation of the act of Congress of the 20th of April, 1818, and held in custody until he can be transferred to the proper district for trial.

JOHN M. CLAYTON,
Secretary of State.

Mr. Hall, district attorney, to Mr. Clayton, Secretary of State.

SOUTHERN DISTRICT OF NEW YORK,
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
May 25, 1850.

SIR: Although I have not myself, nor has any other officer of the General Government here, been able to fix upon any individual
[667] a specific charge of criminality *under the act of April, 1818, so as to bring him before a court and jury, or authorize his arrest, I have, nevertheless, deemed it to be my duty, under the late instructions received from you, to lay your letter and its inclosures before the grand jury, now in session, and direct their attention to our laws concerning neutrality, and the necessity for their strict observance.

This was done on Thursday last, during the absence of Judge Betts from the city; but on his return, yesterday, he expressed his approval of the course I had taken, and will on Monday next make a specific charge to the grand jury as to their duties upon this whole subject. I shall issue subpœnas to the editors and proprietors of the Sun newspaper, and all persons making themselves known in this atrocious movement.

With the highest respect, &c.,

J. PRESCOTT HALL,
United States Attorney.

Hon. JOHN M. CLAYTON,
Secretary of State.

Mr. Hall, district attorney, to Mr. Clayton, Secretary of State.

SOUTHERN DISTRICT OF NEW YORK,
UNITED STATES DISTRICT ATTORNEY'S OFFICE,
May 25, 1850.

SIR: Your letter of the 24th instant is just received, and I have sent for the Spanish consul to call at this office forthwith, and furnish such information as may enable me to proceed at once under the sixth section

of the act of 1818. You may rely upon "a rigid execution of the law," so far as it can be executed by your obedient servant,

J. PRESCOTT HALL,
United States Attorney.

Hon. JOHN M. CLAYTON,
Secretary of State, &c., &c.

P. S.—Before your letter was received, I had addressed a communication to you upon this subject, which you will doubtless receive to-morrow.

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[668] **Mr. Clayton, Secretary of State, to Mr. Hall, district attorney.*

[Extract.]

DEPARTMENT OF STATE,
Washington, May 26, 1850.

Your several notes of yesterday's date were received to-day. In reply to that part of your note dated yesterday, at 3½ p. m., I am directed to state that you have full authority from the President to act under the eighth section of the act of 20th April, 1818, in order to seize and detain munitions of war intended to be used in aid of the Cuban expedition. It is expected by the President that you will, as far as in your power, strictly execute the law.

Mr. Jones, Adjutant-General, to Colonel Crane, United States Army, and to others.

[Circular.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, August 24, 1849.

SIR: In order to execute the laws and more effectually to enforce the President's proclamation of the 11th instant, based thereon, the Secretary of War directs that, in concert with the civil authority, you will take such measures as may be requisite and proper within the range of your command, for the purpose of preventing the carrying on any military expedition or enterprise from the territories or jurisdiction [669] of the United States, by any persons within the *same; "against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace."

In order to the due execution of these instructions you will communicate with the United States district attorney; and when called on by him, or such other person as the President shall have empowered for the purpose, you will employ the force under your command to aid in enforcing the said proclamation of August 11, 1849.

Respectfully,

R. JONES,
Adjutant-General.

[Addressed to: Colonel J. B. Crane, First Artillery, Fort Columbus, New York; Brevet Lieutenant-Colonel Webster, First Artillery, Fort

Mifflin, Pennsylvania; Major L. Whiting, First Artillery, Fort Hamilton, New York; Brevet Brigadier-General T. Childs, First Artillery, Fort McHenry, Maryland; Brevet Brigadier-General J. Bankhead, Second Artillery, Fort Monroe, Virginia; Lieutenant-Colonel J. Ewing, Second Artillery, Fort Moultrie, South Carolina; Brevet Major A. Lowd, Second Artillery, Savannah, Georgia; Brevet Colonel C. F. Smith, Second Artillery, Fort Marion, Florida; Brevet Captain J. Scarritt, Corps of Engineers, Fort Morgan, Alabama; Brevet Colonel J. I. Gardner, Fourth Artillery, Fort Pickens, Florida; Commanding officer at Pascagoula, Mississippi; Commanding officer at New Orleans Station, Louisiana.]

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[670] **Mr. Preston, Secretary of the Navy, to the President.*

NAVY DEPARTMENT, *May* 25, 1850.

SIR: I have the honor to transmit, herewith inclosed, copies of all correspondence and orders relative to an alleged revolutionary movement in the island of Cuba, prepared from the files and records of this Department, and called for by the resolution of the Senate of the United States under date of May 23, 1850.

I have the honor to be, sir, yours, &c., &c.,

WILLIAM BALLARD PRESTON.

The PRESIDENT.

Mr. Preston, Secretary of the Navy, to Commodore Sloat, commandant navy-yard.

[Telegram.]

NAVY DEPARTMENT, *May* 15, 1850.

Commodore J. D. SLOAT,
Commandant Navy-Yard, Portsmouth, Virginia:

Prepare the United States steamer Saranac for immediate service. Sailing-instructions will be sent by mail.

WILLIAM BALLARD PRESTON.

Mr. Preston, Secretary of the Navy, to Commodore Downes, commandant navy-yard.

[Telegram.]

NAVY DEPARTMENT, *May* 15, 1850.

Commodore JOHN DOWNES,
Commandant Navy-Yard, Charlestown, Massachusetts:

Report by telegraph the arrival at Boston of the Albany. Prepare her for immediate service. Sailing instructions will be sent by mail.

WILLIAM BALLARD PRESTON.

[671] *Mr. Preston, Secretary of the Navy, to Commodore Parker, commanding home squadron.*

NAVY DEPARTMENT, *May* 15, 1850.

SIR: The confidential instructions, in relation to which I conferred with you this morning, are being prepared, and will be dispatched by to-morrow's mail.

As there is no vessel of the home squadron within your reach, I have not deemed it necessary to order you to proceed to the scene of action, and particularly as the condition of your family is such as to render it somewhat inconvenient to you.

The Saranac will proceed forthwith.

I am, very respectfully, yours, &c., &c.,

WILLIAM B. PRESTON.

Commodore F. A. PARKER,
Commanding Home Squadron, Washington, D. C.

Mr. Preston, Secretary of the Navy, to Captain Tatnall, United States Navy.

[Confidential.]

NAVY DEPARTMENT, *May* 15, 1850.

SIR: Though the Government has no precise information, yet it has been informed, from sources entitled to great respect and consideration, that a military organization has been effected in the interior of the United States, formidable both in numbers and from the character of those engaged in it, for the purpose of attacking the island of Cuba, and of revolutionizing the government. This force is represented to consist of between six and ten thousand troops of the best kind
[672] and material to render the assault formidable, and, *as it is believed, is sufficient, with other means and resources at command, to emancipate Cuba from Spanish rule. Large numbers of those engaged in the enterprise departed, as it is alleged, from the city of New Orleans, accompanied by Generals Lopez, Gonzales, and others. It is represented that they expect to effect a landing upon the island about this time. All accounts concur in representing that it is a military expedition or enterprise begun and set on foot within the territory or jurisdiction of the United States, to be carried on from thence against the island of Cuba and the government of Spain. Any such invasion of that island is in violation of our obligations of neutrality to the government of Spain.

The Government of the United States is bound to respect the rights of the inhabitants of Cuba and of the government of Spain, and "no person is permitted within the territory or jurisdiction of the United States to begin or to set on foot or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory of any foreign prince or state, or of any colony, district, or people."

You are therefore directed by the President of the United
[673] States to repair forthwith, with *the United States steamer Saranac under your command, to the port of Havana, in the island of Cuba, and vigilantly and actively observe the movements and opera-

tions of all vessels approaching the harbor of Havana or the island of Cuba, for the purpose of ascertaining whether any military expedition or enterprise has been begun or set on foot, or any means provided to be carried on from the United States against the territory or dominions of Spain.

Should you ascertain that such hostile movement is on foot and is proceeding against the island of Cuba, you will use all proper means in your power to prevent a landing or the carrying out such expedition or enterprise, so as to avert and prevent the violation of our obligations of amity and peace with Spain.

Should the expedition have effected a landing and a revolution be in progress, you will prevent the landing of any re-enforcement or of any arms or provisions, under the American flag. To the citizens of the United States who may be there in the prosecution of their peaceful and lawful pursuits, and who may apprehend danger either to their persons or property, you will extend the protection and aid to which they are entitled as American citizens.

An order has been given to Commodore Parker to dispatch
[674] such of the vessels of the home *squadron to co-operate with you in the fulfillment of this order as may be within his reach.

Should you upon your arrival at Havana ascertain satisfactorily that no such expedition is on foot, you will return to the harbor of Norfolk and report to the Department, in the mean time keeping it fully informed of all occurrences connected with the duty herein assigned to you.

The service to which you are ordered is one of great delicacy and importance. The Department relies upon your prudence, your discretion, and your decision, for the successful accomplishment of all its objects.

I am, respectfully, yours, &c.,

WILLIAM BALLARD PRESTON.

Captain JOSIAH TATNALL,
Commanding United States Steamer Saranac, Norfolk, Virginia.

[The same to Commodore F. A. Parker, commanding home squadron, Washington; Commodore V. M. Randolph, commanding United States sloop of war Albany: Commodore Charles Lowndes, commanding United States steamer Germantown, Pensacola, Florida; Lieutenant James H. Ward, Commanding United States steamer Vixen, Pensacola, Florida; Captain Isaac McKeever, commanding United States frigate Congress, Norfolk, Virginia.]

Mr. Preston, Secretary of the Navy, to Captain Tatnall, United States Navy.

[Confidential.]

NAVY DEPARTMENT, *May* 17, 1850.

[675] SIR: By a dispatch, received this morning from *Commander Randolph, of the Albany, I am informed that that vessel, together with the Germantown and Vixen, was at Port au Prince, in the island of St. Domingo, on the 29th ultimo, and that he proposed leaving that port for Havana when his appearance at Port au Prince was no longer necessary to carry out certain orders.

It is therefore probable that you may find those vessels at Havana on your arrival there. Orders, similar to those given to you on the 15th instant, have been dispatched to Pensacola, expecting they would be

there. Should you fall in with either or all of those vessels, or have it in your power to communicate with them, you will require them to co-operate with you in the execution of the order of the 15th instant.

I am, very respectfully, yours, &c.,

WILLIAM BALLARD PRESTON.

Captain JOSIAH TATNALL,
Commanding U. S. Steamer Saranac, Aquia Creek, Virginia.

Mr. Preston, Secretary of the Navy, to Captain Newton, United States Navy.

[Telegram.]

NAVY DEPARTMENT, *May* 16, 1850.

Captain JOHN T. NEWTON,
Commanding Navy-Yard, Pensacola, Florida:

The Germantown and Vixen are to be prepared for immediate service. Sailing-instructions will be sent by mail.

WILLIAM BALLARD PRESTON.

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[676] **Mr. Preston, Secretary of the Navy, to Commodore Parker, United States Navy.*

[Strictly confidential.]

NAVY DEPARTMENT, *August* 9, 1849.

SIR: Though the Government has no precise information, yet it has been informed by communication from Brevet Major-General Twiggs "that six hundred men raised in New Orleans landed, on the 31st ultimo, on Round Island, three miles from Pascagoula; that they are unarmed, and encamped under their commander, Colonel White." General Twiggs was informed by Colonel White "that it was a party of emigrants destined to California." The general further states "that, large as was the body of men, he should have given the subject no consideration but for the popular belief that an expedition is being fitted out in the Southwest and West for the invasion of Cuba or to revolutionize the Mexican States of the Sierra Madre. Rumor here," the general remarks, "and in the city of New Orleans, points to this body of six hundred men as a portion of the band to be employed and which is to receive large re-enforcements from the Western States." Other information less authentic has been furnished, in which it is alleged that Colonel White is preparing an expedition against Cuba; that on the 28th ultimo he had
[677] raised four hundred men in New Orleans; that *he expected to raise in that city, in all, eight hundred, and corresponding numbers in Boston, New York, and Baltimore; that the recruits at New Orleans are to be drilled at Cat Island, from which point they are to embark in the steamer Fanny, about the 20th or 25th instant, for the south side of Cuba; and that a considerable number of the military in Cuba are said to be in communication with them. Colonel Briscoe, of New Orleans, and Charles C. Campbell are to be officers in the expedition; that Whiting & Co., of New Orleans, have $250,000 to forward the expedition.

Any such invasion of either Cuba or Mexico is a violation of our obligations of neutrality, as we are at peace with both governments.

The United States are bound to respect the rights both of Spain and of Mexico, and "no person is permitted within the territory or jurisdiction of the United States to begin or to set on foot, or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory of any foreign prince or state, or of any colony, district, or people with which the United States are at peace."

You are therefore directed by the President to repair forthwith,
[678] with the force under your *command, to the vicinity of Cat Island and the mouth of the Mississippi River, and co-operate with the district attorney of the United States and the collector of the customs at New Orleans, and act in concert with them, availing yourself of all such information and of all such means as they may have at their command, and vigilantly and actively observe the movements and operations of any bands or assemblages of people, for the purpose of ascertaining whether any hostile military expedition or enterprise is begun or set on foot, or any means provided against the territory or dominions of any prince or state, or any colony, district, or people with whom the United States are at peace.

Should you discover and ascertain any such attempt, by any portion of our citizens, to invade either Cuba or Mexico, you will employ the force under your command to prevent it.

If you should receive any information, or discover any fact with regard to said movements, you will not only take prompt measures to arrest it, but you will give early notice to the Department.

Should you, on reaching Cat Island and its vicinity, ascertain that a hostile movement is on foot and has proceeded against the island
[679] *of Cuba, you will repair with the force under your command to that island and use all proper means in your power by preventing their landing, so as to avert and prevent the violation of our obligations of amity and peace with Spain.

The duty assigned to you may become highly delicate and important. The Department relies upon your prudence, your sagacity, and your discretion for the successful accomplishment of the service to which you are ordered.

Very respectfully, yours, &c.,

WM. BALLARD PRESTON.

Commodore FOXHALL A. PARKER,
Commanding United States Home Squadron, Pensacola, Florida.

Mr. Preston, Secretary of the Navy, to Lieutenant Hunter, United States Navy.

[Strictly confidential.]

NAVY DEPARTMENT, *August* 14, 1849.

SIR: Information has been received by this Department which induces the belief that a body of our citizens, within the jurisdiction of the United States, has begun and set on foot, and are now preparing a military expedition or enterprise, to be carried on from thence against Cuba, or the Mexican States of the Sierra Madre, for the purpose
[680] of invading or revolution*izing the same. An order was issued

on the 9th instant to Commodore Parker, commanding the home squadron, directing him to proceed to the point at which the Department is informed a force is probably assembling, with directions to arrest and suppress any such hostile and illegal movement against any people or country with which the United States are at peace.

I inclose with this order a copy of that of the 9th instant, addressed to Commodore Parker; and you are hereby ordered by the President of the United States to proceed with the United States steamer Alleghany under your command, so soon as she is in readiness for service, to Cat Island and the mouth of the Mississippi River, and there report to Commodore F. A. Parker for further instructions.

On your way to join Commodore Parker you will vigilantly and actively observe the movements of such vessels as may fall in your way, for the purpose of ascertaining whether any such hostile movement is begun or set on foot, or in progress of preparation, against the territory of either Cuba, Mexico, or any other country with which the United States are at peace.

Should you, before joining Commodore Parker, discover and
[681] detect any such attempt, you *will use all proper means in your power to avert and prevent any violation of our laws of neutrality or treaty stipulations; and in the execution of this order, you will confine yourself to the instructions and orders of the 9th instant, addressed to Commodore Parker.

Purser Slamm will remain on board the Alleghany until her return to this or some northern port, when the transfer of his accounts will be made. Requisitions for the wants of the Alleghany must be drawn in the usual manner; but the Department expects that you will not approve any requisition for money not required for actual expenditure.

The Department relies upon your prudence, your sagacity, and your discretion for the successful fulfillment of the orders with which you are intrusted.

Very respectfully, yours, &c.,

WM. BALLARD PRESTON.

Lieutenant W. W. HUNTER,
Commanding United States Steamer Alleghany,
Potomac River, Washington, D. C.

Mr. Preston, Secretary of the Navy, to Captain McCauley, United States Navy.

[Confidential.]

NAVY DEPARTMENT, *August* 14, 1849.

SIR: The Department has intrusted to Lieutenant-Command-
[682] ant W. W. Hunter confidential instruc*tions which require his early departure from Washington. You will therefore be pleased to expedite the preparation of the United States steamer Alleghany under his command, and render every facility to accomplish that object.

Very respectfully, yours, &c.,

WM. BALLARD PRESTON.

Captain CHARLES S. MCCAULEY,
Commanding United States Navy-Yard, Washington.

Mr. Preston, Secretary of the Navy, to Commodore Parker, United States Navy.

NAVY DEPARTMENT, *August* 14, 1849.

SIR: The United States steamer Alleghany, under the command of Lieutenant W. W. Hunter, has been directed to proceed to Cat Island, and the mouth of the Mississippi River, and there to report to you for further instructions.

This additional force it has been deemed advisable to send you, in connection with the confidential instructions to your address under date of the 9th instant, and you will be pleased to detain the Alleghany no longer than may be absolutely necessary to accomplish the objects set forth in the order of the 9th instant, before referred to.

She will return to Washington.

Very respectfully, yours, &c.,

WM. BALLARD PRESTON.

[683] *Commodore F. A. PARKER,
*Commanding Home Squadron, off Cat Island,
Mouth of the Mississippi.*

Mr. Preston, Secretary of the Navy, to Commander Lowndes, United States Navy.

[Strictly confidential.]

NAVY DEPARTMENT, *August* 21, 1849.

SIR: You will proceed forthwith, with the United States ship Germantown under your command, to Havana, in the island of Cuba, in charge of dispatches from the Department of State and from the Honorable John M. Clayton, Secretary of that Department, directed to "Robert B. Campbell, esq., United States consul, Havana, Cuba," and there deliver the said dispatches in person to the said consul.

Inclosed herewith you will also find a copy of a confidential order from this Department to Commodore Foxhall A. Parker, commanding United States home squadron, to which you are attached; and you are hereby ordered and directed, after the delivery of the before-mentioned dispatches, to rejoin the squadron under the command of Commodore Parker, if you are induced to believe from any reliable information you may receive that he has, under his confidential order, proceeded in the direction of the island of Cuba in execution thereof; and in the
[684] absence of *Commodore Parker you will be governed by the instructions given to him, a copy of which is inclosed, except so far as by said instructions he is required to proceed to Cat Island and the mouth of the Mississippi.

After remaining a reasonable time at the island of Cuba, and receiving no information inducing you to believe that a military expedition is in progress toward that island, you will return to Boston, in execution of the orders already given by Commodore Parker, or such other orders as he may give to you.

I am, very respectfully, yours, &c.,

WM. BALLARD PRESTON.

Commander CHARLES LOWNDES,
*Commanding United States Steamer Germantown,
Boston, Massachusetts.*

Mr. ...on, Secretary of the Navy, to Commodore Downes, United States Navy.

NAVY DEPARTMENT, *August* 21, 1849.

SIR: The inclosed packet, addressed to Commander Charles Lowndes, commanding the United States ship Germantown, you will be pleased to have delivered to him with all practicable dispatch. His services with the vessel under his command are required under confidential instructions; you will therefore be pleased to facilitate his move-
[685] ments by affording every aid in your power *to hasten his departure from Boston.

I am, very respectfully, yours, &c.,

WM. BALLARD PRESTON.

Commodore JOHN DOWNES,
Commandant United States Navy-Yard, Boston.

Mr. Preston, Secretary of the Navy, to Commodore Parker, United States Navy.

[Confidential.]

NAVY DEPARTMENT, *August* 23, 1849.

SIR: Inclosed herewith you will receive duplicate of confidential instructions addressed to you on the 9th instant at Pensacola.

As it appears from your last dispatch that you sailed from Pensacola before those instructions reached you, viz, on the 15th instant, you will proceed forthwith, on receipt of this order, to carry into effect the instructions referred to.

The United States steamer Alleghany, Lieutenant-Commanding W. W. Hunter, has been added to your command, in connection with the service assigned to you under date of the 9th instant. You will be pleased to detain that vessel no longer than may be necessary to effect the object, and, when accomplished, you will direct her to return to the port of Washington, D. C.

Very respectfully, yours, &c.,

WM. BALLARD PRESTON.

Commodore F. A. PARKER,
Commanding United States Home Squadron,
Newport, Rhode Island.

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[686] **Commander Randolph, United States Navy, to Mr. Preston, Secretary of the Navy.*

UNITED STATES SHIP ALBANY,
At anchor off the east end of Horn Island, August 28, 1849.

SIR: I have the honor to inform you that the Albany, under my command, is at present anchored as above. Our present anchorage is about ten miles from Round Island, and is the nearest point to the scene of our operations (Round Island) which a vessel of our draught can reach.

I have stationed steamer Water Witch, Lieutenant-Commandant Totten, close to Round Island, and shall employ the boats of the Albany

to assist in guarding the spot night and day, so as to prevent arms and other munitions of war from being landed on the island, and likewise to prevent the adventurers from being taken from the island in sea-going vessels.

Agreeably to your instructions to Commodore Parker, I have communicated and have consulted with the district attorney and with the collector of the customs at New Orleans, and from every information received have satisfied myself that the persons congregated at Round Island are meditating a hostile expedition against either Cuba or the Sierra Madre States of Mexico.

I believe they are not particular where they go, provided they are well paid for their services. Indeed, up to this time the privates are known to be in total ignorance of the point at which they are to
[687] disembark *after leaving our waters. We have conversed with many on the subject, and have now three of the privates on board of the Water Witch, on a visit, and they all unite in declaring their ignorance of the point. I much question whether the officers themselves are positively certain where they are going. They are unquestionably a band of reckless adventurers. Four-fifths of the privates, I am happy to state, are foreigners—Irish and Dutch, chiefly.

After a careful examination of the proclamation of the President, and of your instructions to Commodore Parker, together with information derived from the most reliable sources, I have determined upon adopting a vigorous course with these people.

The leaders are not men of high respectability; four-fifths of the rank and file are foreigners; their operations are conducted with a degree of mystery which precludes honesty of purpose; and every circumstance goes to prove that they are a band of reckless military adventurers. I have, therefore, sent them a written summons to disperse immediately, a copy of which summons I have herewith forwarded to the Department, and trust it will be approved by the honorable Secretary of the Navy.

I stand in great need of two or more small steamers, to assist in blockading and breaking up the establishment on Round Island. I have written to request Captain J. T. Newton to send me the General
[688] Taylor, *and, if possible, the Walker too, but neither has arrived as yet.

I am almost induced to send to New Orleans for the purpose of hiring a steamboat to be employed on this service, but shall wait a day or two longer, with the hope that a re-enforcement will be sent from Pensacola.

I am, sir, respectfully, &c.,

V. M. RANDOLPH,
Commander.

Hon. WM. BALLARD PRESTON,
Secretary of the Navy, Washington, D. C.

[Inclosure.]

Commander Randolph, United States Navy, to the persons encamped on Round Island, near Pascagoula.

FRIENDS AND FELLOW-COUNTRYMEN: The proclamations of the President of the United States, and other instructions which I have received from the Government at Washington, make it imperative and proper that I should immediately take measures to break up your unlawful

assemblage, and send you back to your homes; and when I have said a few words to you in proof of your assemblage being unlawful, and of the utter impossibility of your evading the vigilance of our squadron and getting out of our waters to proceed upon your contemplated wild expedition to make war against nations at peace with our own, I feel sure you will at once disperse, and seek honest and peaceful occupations.

[689] *First. The very mystery which marks the movements and actions of your officers, and the blind ignorance of the men as to the destination of the enterprise, clearly show that the objects and purposes of those at the head of your affairs are known to be unlawful, and that plunder is the inducement held out to all who embark in this reckless expedition.

Second. We have proof that some of you have acknowledged that your destination was Cuba, and that others of your number have said that the expedition was fitting out for the invasion of the Sierre Madre States of Mexico, showing conclusively that your enterprise is one of a military character.

And lastly. You are vagrants in the eyes of the law and in fact, and therefore cannot be allowed to occupy your present position, and must immediately disperse.

I will now prove to you that we have the means of not only preventing your embarkation to foreign parts, but that we can force you to abandon your present headquarters.

I shall employ all the vessels now in this vicinity, or which may hereafter arrive, in such manner as will most effectually bring about the ends desired:

First. I shall certainly prevent the steamers Fanny, Maria
[690] Burt, or any other steamer or steamers, *vessel or vessels, of whatever description, from furnishing the adventurers on Round Island with arms or other munitions of war.

Second. If said steamers or vessels have arms or other munitions of war on board, I shall take possession of said arms, &c., and detain said steamers or vessels until the men congregated on Round Island are dispersed.

Third. I shall prevent the band of men on Round Island from embarking on board of said steamers or vessels, or from having any communication with them at all.

Fourth. I will make said steamers or vessels anchor within range of our guns.

Fifth. After to-day, (28th August,) in accordance with a notice before given them, I shall cut off all supplies of provisions which may be intended for the persons on Round Island, and shall rigidly enforce this blockade or embargo until they abandon the spot and go home.

Sixth. I shall gladly give the persons on Round Island every facility to get away, taking particular care, however, that they do not embark in *sea-going* vessels.

V. M. RANDOLPH,
Commanding United States Ship Albany, and senior officer afloat in the Gulf of Mexico.

UNITED STATES SHIP ALBANY,
Off Pascagoula, August 28, 1849.

[691] **Commandant Newton, United States Navy, to Mr. Preston, Secretary of the Navy.*

COMMANDANT'S OFFICE,
Navy-Yard, Pensacola, August 31, 1849.

SIR: Having sent all the available force at my command to carry out the instructions received from the Navy Department under date of the 9th instant, addressed to Commodore Parker of the home squadron, but in his absence opened by me, agreeably to his request, I have the honor to forward to the Department herewith, for its information, copies of all the orders issued by me to the commanding officers of the several vessels which I have dispatched from this station, on the service to which the instructions to Commodore Parker related.

I have the honor to be, very respectfully, your obedient servant,
JOHN THOMAS NEWTON,
Commandant.

Hon. WM. BALLARD PRESTON,
Secretary of the Navy, Washington.

COPIES OF ALL ORDERS AND INSTRUCTIONS GIVEN TO THE COMMANDING OFFICERS OF THE SEVERAL VESSELS DISPATCHED TO THE VICINITY OF ROUND ISLAND, &c.

[692] **Commandant Newton, United States Navy, to Commander Randolph, United States Navy.*

COMMANDANT'S OFFICE,
Navy-Yard, Pensacola, August 17, 1849.

SIR: You will prepare the United States sloop-of-war Albany, under your command, for sea with all possible dispatch.

I am, very respectfully, your obedient servant,
JOHN THOMAS NEWTON,
Commandant.

Commodore V. M. RANDOLPH,
Commanding United States Ship Albany,
Off Navy-Yard, Pensacola.

Commandant Newton, United States Navy, to Commander Randolph, United States Navy.

COMMANDANT'S OFFICE,
Navy Yard, Pensacola, August 18, 1849.

SIR: You will proceed with the United States sloop-of-war Albany, under your command, and carry out, as far as practicable, the instructions of the honorable Secretary of the Navy, addressed to Commodore Foxhall A. Parker, commanding the home squadron, a copy of which instructions is contained in the accompanying parcel, and which you are hereby expressly enjoined not to open until after you have discharged the pilot.

[693] The schooner Flirt is daily expected here, and I will *send her to join you to assist in carrying out the views and wishes of the Department.

You will not fail to communicate to the Department, direct, any information you may obtain relative to the important object for which you are sent, and at the same time forward to me duplicates of your report, &c.

I must refer you to the honorable Secretary of the Navy's instruction for your further government.

When in want of stores and provisions, you will return again to this port.

Wishing you a pleasant cruise, I am, very respectfully, your obedient servant,

JOHN THOMAS NEWTON,
Commandant.

Commander V. M. RANDOLPH,
Commanding United States Sloop Albany,
Off Navy Yard, Pensacola.

Commandant Newton, United States Navy, to Lieutenant-Commander Totten, United States Navy.

COMMANDANT'S OFFICE,
Navy Yard, Pensacola, August 19, 1849.

SIR: It is of the utmost government importance that the steamer under your command should be prepared for active service with as little delay as possible. You will be pleased, therefore, to have ready, and, if possible, to go to sea some time during the day to-morrow.

[694] *I am, very respectfully, &c.,

JOHN THOMAS NEWTON,
Commandant.

Lieutenant-Commandant GEORGE M. TOTTEN,
Commanding Steamer Water Witch, Off Navy Yard, Pensacola.

Commandant Newton, United States Navy, to Lieutenant-Commander Totten, United States Navy.

[Sealed orders.]

AUGUST 20, 1849.

SIR: You will proceed direct with the United States steamer Water Witch, under your command, to Cat Island, and there join the United States ship Albany, Commodore V. M. Randolph, and assist him in carrying out the instructions of the honorable Secretary of the Navy, a copy of which accompanies this.

Should you not fall in with the Albany at Cat Island, or its vicinity, you will proceed to Balize, in further pursuance of the orders.

Wishing you a pleasant cruise, I am, very respectfully, &c.,

JOHN THOMAS NEWTON,
Commandant.

Lieutenant-Commander GEO. M. TOTTEN,
United States Steamer Water Witch.

[695] **Commandant Newton, United States Navy, to Lieutenant-Commandant Totten, United States Navy.*

COMMANDANT'S OFFICE,
Navy-Yard, Pensacola, August 20, 1849.

SIR: You will proceed to sea at once with the steamer Water Witch, under your command; and you are hereby strictly enjoined not to open the accompanying *sealed parcel* until after your vessel crosses the bar and the pilot leaves you.

I am, very respectfully, &c.,

JOHN THOMAS NEWTON,
Commandant.

Lieutenant-Commandant GEO. M. TOTTEN,
Commanding United States Steamer Water Witch.

Commandant Newton, United States Navy, to Lieutenant-Commander Farrand, United States Navy.

AUGUST 23, 1849.

SIR: You will be pleased to prepare the United States schooner Flirt, under your command, for sea with all possible dispatch. It is highly important that all possible dispatch and diligence be used in getting her ready.

I am, respectfully, your obedient servant,

JOHN THOMAS NEWTON,
Commandant.

Lieutenant-Commandant EBEN FARRAND,
Commanding United States Schooner Flirt, off Navy-Yard.

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[696] **Commandant Newton, United States Navy, to Lieutenant-Commander Farrand, United States Navy.*

[Sealed orders.]

AUGUST 27, 1849.

SIR: You will please proceed with the United States schooner Flirt, under your command, with the least possible delay, and report to Commander V. M. Randolph, of the Albany, whom you will find at Cat Island, or in its vicinity. Should the Albany, however, have left there, and after having fulfilled the instructions as regards that particular spot, you will proceed to the mouths of the Mississippi, and be further governed by the confidential orders (a copy of which is herewith inclosed) from the honorable Secretary of the Navy, addressed to Commodore Parker.

It is very desirable that you fall in, if possible, with the Albany and Water Witch, that the force may be more formidable, and to act in concert.

After having performed the service assigned you, or when short of provisions, you will return again to this port.

Wishing you a pleasant cruise, &c., I am, very respectfully, &c.,

JOHN THOMAS NEWTON,
Commandant.

Lieutenant-Commander EBEN FARRAND,
Commanding United States Schooner Flirt.

[697] ** Commandant Newton, United States Navy, to Lieutenant-Commandant Farrand, United States Navy.*

[Handed with sealed orders.]

AUGUST 28, 1849.

SIR: Proceed to sea at once with the United States schooner Flirt, under your command, and be governed by the accompanying *sealed orders*, which you are expressly enjoined not to open until after you have crossed the bar and discharged the pilot.

I am, very respectfully, &c.,

JOHN THOMAS NEWTON,
Commandant.

Lieutenant-Commandant EBEN FARRAND.

Commandant Newton, United States Navy, to Commodore Parker, United States Navy.

AUGUST 27, 1849.

SIR: I herewith inclose for your information a copy of a letter of the 23d instant, from Commander V. M. Randolph, of sloop Albany, and a copy of my reply to same, dated 26th instant.

I also inclose a copy of Commander Randolph's report to the honorable the Secretary of the Navy, dated off Ship Island, the 25th instant.

The Flirt is on the point of sailing, and I have furnished Lieutenant-Commandant Farrand with sealed orders, as in the case of the Albany and Water Witch, and in pursuance thereof he will join those vessels, and co-operate with their commanders.

I am, very respectfully, &c.,

JOHN THOMAS NEWTON,
Commandant.

Commodore FOXHALL A. PARKER,
Commanding Home Squadron, Newport, Rhode Island.

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[698] ** Commandant Newton, United States Navy, to Commander Randolph, United States Navy.*

AUGUST 28, 1849.

SIR: I send the United States steamer General Taylor, under the command of Mr. John Pearson, master, who will report to you. He is well acquainted with all the islands and shoals in the vicinity of your operations, and will be very serviceable to you in piloting through the intricate passages, as well as in other respects.

The General Taylor had a six-pounder field-piece mounted, with the proper ammunition, &c., and small-arms for the crew.

Do not neglect to send her back at the expiration of one week.

I am, very respectfully, &c.,

JOHN THOMAS NEWTON,
Commandant.

Commander V. M. RANDOLPH,
Commanding United States Sloop Albany.

Commandant Newton, United States Navy, to Master Pearson, United States Navy.

[Sealed orders.]

AUGUST 28, 1849.

SIR: You will proceed without delay to the southeast end of Horn Island with the United States steamer General Taylor, under your command, where you will find the sloop of war Albany, Commander
[699] V. M. *Randolph, to whom you will report.

I have requested him to send you back with the General Taylor, at the expiration of one week from the date on which you report, and sooner if your services can be dispensed with.

You will take every precaution to prevent accident by fire, or otherwise, and be strictly governed by the rules and regulations which are hung up on board.

I am, respectfully, &c.,

JOHN THOMAS NEWTON,
Commandant.

Mr. JOHN PEARSON,
Master United States Navy, Commanding Steamer General Taylor.

Commandant Newton, United States Navy, to Sailing-master Pearson, United States Navy.

AUGUST 28, 1849.

SIR: You will proceed to sea with the United States steamer General Taylor, under your command, and govern your movements by the instructions which you will find in the accompanying parcel, which you are strictly enjoined not to open until you have crossed the bar and discharged the pilot.

I am, very respectfully, your obedient servant,

JOHN THOMAS NEWTON,
Commandant.

Mr. JOHN PEARSON,
Sailing-master United States Navy,
Commanding United States Steamer General Taylor.

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[700] **Commandant Newton, United States Navy, to Commander Randolph, United States Navy.*

COMMANDANT'S OFFICE,
Navy-Yard, Pensacola, September 6, 1849.

SIR: Your letter of the 4th instant, inclosing a copy of your letter to Lieutenant-Commandant E. Farrand, of the Flirt, and his letter to you in reply, has been received. I was glad to be informed of your determination to raise the blockade of Round Island. Indeed, I am of opinion that you ought not to have so proclaimed it without *special orders* from the Government at Washington.

I am glad to hear that there is a prospect of the band of adventurers dispersing, and that their contemplated enterprise will be broken up.

I am not definitely informed as to the destination of the steamers Alleghany and Vixen. I saw it stated in the newspapers, several days

since, that the former had left Norfolk under sealed orders; the latter vessel, I believe, is still in that port, preparing for sea.

I wrote you by the mail of the 31st ultimo, and again on the 3d instant by the Creole, both of which letters I hope you have received.

I have forwarded copies of your letter of the 4th, and its inclosures, and a copy of this letter, to the Navy Department.

I am, sir, respectfully, your obedient servant,

JOHN THOMAS NEWTON,
Commandant.

Commander VICTOR M. RANDOLPH,
Commanding United States Sloop Albany, off Horn Island.

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[701] **Mr. Preston, Secretary of the Navy, to Commander Randolph, United States Navy.*

NAVY DEPARTMENT, *September* 29, 1849.

SIR: The official reports of your proceedings and movements with a portion of the home squadron under your command, in the neighborhood of Round Island, dated 25th and 28th of August, and 1st and 5th of September, 1849, and the inclosures relating thereto, have been received.

The prompt, the decisive, and the satisfactory manner in which you have executed the confidential instructions of the 9th ultimo, addressed to Commodore Foxhall A. Parker, is fully approved by the Department.

Very respectfully, yours, &c.,

WM. BALLARD PRESTON.

Commander VICTOR M. RANDOLPH,
Commanding U. S. Ship Albany, off Pascagoula, Mississippi.

Mr. Meredith, Secretary of the Treasury, to Mr. Peters, collector.

[Strictly confidential.]

TREASURY DEPARTMENT, *August* 10, 1849.

SIR: Information has been received that a military expedition is in preparation within the territory of the United States to be carried
[702] on from thence against the territory of Mexico or *Cuba, probably the latter. It is believed to be designed that part of the force to be employed in this expedition shall proceed by sea from a point within or near your district. I send you herewith copies of a note which I have received from the Seretary of the Interior, and of confidential orders issued by the Secretary of the Navy to Commodore Parker. These papers contain the information now in possession of the Government so far as relates to preparations in your vicinity. You are requested to communicate with the attorney of the United States, and aid, so far as may be in your power, in detecting and suppressing this attempt to violate the laws of the United States, and if any case should arise in which your official interventionmay be required under the act of 20th April, 1818, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal

the acts therein mentioned," you will of course act promptly in pursuance of the provisions of that statute.

I am, very respectfully, your obedient servant,

WM. M. MEREDITH,
Secretary of the Treasury.

S. J. PETERS, Esq.,
Collector of the Customs, New Orleans, Louisiana.

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[703] **Mr. Meredith, Secretary of the Treasury, to collectors.*

TREASURY DEPARTMENT, *May* 28, 1850.

SIR: It is apprehended that expeditions designed for the invasion of the island of Cuba are preparing within the territories of the United States, in violation of the provisions of the act of 20th April, 1818, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," and that a part of the force to be so employed may proceed by sea from the waters embraced within your district.

Your particular attention is called to the provisions of the act referred to, and you are requested to communicate with the attorney of the United States, and aid so far as may be in your power in detecting and suppressing all attempts to violate the laws of the United States; and if any case should arise in which your official intervention may be required under the provisions of the act of 20th April, 1818, you will of course act promptly in pursuance of the provisions of the statute.

Very respectfully, your obedient servant,

WM. M. MEREDITH,
Secretary of the Treasury.

COLLECTORS, *Boston, New York, Baltimore, Philadelphia, Charleston, Savannah, Mobile, Key West, New Orleans.*

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[704] **By the President of the United States.*

A PROCLAMATION.

There is reason to believe that an armed expedition is about to be fitted out in the United States, with an intention to invade the island of Cuba or some of the provinces of Mexico. The best information which the Executive has been able to obtain, points to the island of Cuba as the object of this expedition. It is the duty of this Government to observe the faith of treaties, and to prevent any aggression by our citizens upon the territories of friendly nations. I have therefore thought it necessary and proper to issue this proclamation, to warn all citizens of the United States who shall connect themselves with an enterprise so grossly in violation of our laws and our treaty obligations, that they will thereby subject themselves to the heavy penalties denounced against them by our acts of Congress, and will forfeit their claim to the protection of their country. No such persons must expect the interference of this Government, in any form, on their behalf, no matter to what extremities they may be reduced in consequence of their conduct. A

enterprise to invade the territories of a friendly nation, set on foot and prosecuted within the limits of the United States, is in the highest degree criminal, as tending to endanger the peace and compromit the honor of this nation; and therefore I exhort all good citizens, as they regard our national reputation, as they respect their own laws and the law of nations, as they value the blessings of peace and the welfare of their country, to discountenance and prevent, by all lawful means, any such enterprise; and I call upon every officer of this Government, civil or military, to use all efforts in his power to arrest, for trial and punishment, every such offender against the laws providing for the performance of our sacred obligations to friendly powers.

Given under my hand the 11th day of August, A. D. 1849, and the seventy-fourth of the Independence of the United States.

Z. TAYLOR.

By the President:
J. M. CLAYTON,
Secretary of State.

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[705] **By the President of the United States of America.*

A PROCLAMATION.

Whereas there is reason to believe that a military expedition is about to be fitted out in the United States with intention to invade the island of Cuba, a colony of Spain, with which this country is at peace; and whereas it is believed that this expedition is instigated and set on foot chiefly by foreigners, who dare to make our shores the scene of their guilty and hostile preparations against a friendly power, and seek by falsehood and misrepresentation to seduce our own citizens, especially the young and inconsiderate, into their wicked schemes—an ungrateful return for the benefits conferred upon them by this people, in permitting them to make our country an asylum from oppression—and in flagrant abuse of the hospitality thus extended to them;

And whereas such expeditions can only be regarded as adventures for plunder and robbery, and must meet the condemnation of the civilized world, while they are derogatory to the character of our country, in violation of the laws of nations, and expressly prohibited by our own: our statutes declare that if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for, any military expedition or enterprise, to be
[706] carried on from thence against the *territory or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years:

Now, therefore, I have issued this my proclamation warning all persons who shall connect themselves with any such enterprise or expedition in violation of our laws and national obligations, that they will thereby subject themselves to the heavy penalties denounced against such offenses, and will forfeit their claim to the protection of this Government, or any interference in their behalf, no matter to what extremities they may be reduced in consequence of their illegal conduct. And, therefore, I exhort all good citizens, as they regard our national reputation, as they respect their own laws and the laws of nations, as they

value the blessings of peace and the welfare of their country, to discountenance and, by all lawful means, prevent any such enterprise; and I call upon every officer of this Government, civil or military, to use all efforts in his power to arrest for trial and punishment every such offender against the laws of the country.

Given under my hand the twenty-fifth day of April, in the year
[707] of our Lord one thousand *eight hundred and fifty-one, and the seventy-fifth of the Independence of the United States.

MILLARD FILLMORE.

By the President:
W. S. DERRICK,
Acting Secretary of State.

By the President of the United States of America.

A PROCLAMATION.

Whereas information has been received by me that sundry persons, citizens of the United States, and others residents therein, are preparing, within the jurisdiction of the same, to enlist or enter themselves, or to hire or retain others, to participate in military operations within the state of Nicaragua:

Now, therefore, I, Franklin Pierce, President of the United States, do warn all persons against connecting themselves with any such enterprise or undertaking, as being contrary to their duty as good citizens and to the laws of their country, and threatening to the peace of the United States.

I do further admonish all persons who may depart from the United States, either singly or in numbers, organized or unorganized, for any such purpose, that they will thereby cease to be entitled to the protection of this Government.

[708] *I exhort all good citizens to discountenance and prevent any such disreputable and criminal undertaking as aforesaid, charging all officers, civil and military, having lawful power in the premises, to exercise the same for the purpose of maintaining the authority and enforcing the laws of the United States.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed to these presents.

Done at the city of Washington the eighth day of December, one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth.

FRANKLIN PIERCE.

By the President:
W. L. MARCY, *Secretary of State.*

By James Buchanan, President of the United States of America.

A PROCLAMATION.

Whereas information has reached me, from sources which I cannot disregard, that certain persons, in violation of the neutrality laws of

the United States, are making a third attempt to set on foot a military expedition within their territory against Nicaragua, a foreign
[709] *state, with which they are at peace. In order to raise money for equipping and maintaining this expedition, persons connected therewith, as I have reason to believe, have issued and sold bonds and other contracts pledging the public lands of Nicaragua, and the transit route through its territory, as a security for their redemption and fulfillment.

The hostile design of this expedition is rendered manifest by the fact that these bonds and contracts can be of no possible value to their holders unless the present government of Nicaragua shall be overthrown by force. Besides, the envoy extraordinary and minister plenipotentiary of that government in the United States has issued a notice, in pursuance of his instructions, dated on the 27th instant, forbidding the citizens or subjects of any nation, except passengers intending to proceed through Nicaragua over the transit route from ocean to ocean, to enter its territory without a regular passport, signed by the proper minister or consul-general of the republic, resident in the country from whence they shall have departed. Such persons, with this exception, "will be stopped and compelled to return by the same conveyance that took them to the country." From these circumstances, the inference is irresistible that persons engaged in this expedition will leave the United States with hostile purposes against Nicaragua. They cannot,
[710] under the guise which they *have assumed, that they are peaceful emigrants, conceal their real intentions, and especially when they know in advance that their landing will be resisted, and can only be accomplished by an overpowering force. This expedient was successfully resorted to previously to the last expedition, and the vessel in which those composing it were conveyed to Nicaragua obtained a clearance from the collector of the port of Mobile. Although, after a careful examination, no arms or munitions of war were discovered on board, yet, when they arrived in Nicaragua they were found to be armed and equipped, and immediately commenced hostilities.

The leaders of former illegal expeditions of the same character have openly expressed their intention to renew hostilities against Nicaragua. One of them, who has already been twice expelled from Nicaragua, has invited, through the public newspapers, American citizens to emigrate to that republic, and has designated Mobile as the place of rendezvous and departure, and San Juan del Norte as the port to which they are bound. This person, who has renounced his allegiance to the United States, and claims to be President of Nicaragua, has given notice to the collector of the port of Mobile that two or three hundred of these emigrants will be prepared to embark from that port about the
[711] *middle of November.

For these and other good reasons, and for the purpose of saving American citizens, who may have been honestly deluded into the belief that they are about to proceed to Nicaragua as peaceful emigrants, if any such there be, from the disastrous consequences to which they will be exposed, I, James Buchanan, President of the United States, have thought it fit to issue this my proclamation, enjoining upon all officers of the Government, civil and military, in their respective spheres, to be vigilant, active, and faithful in suppressing these illegal enterprises, and in carrying out their standing instructions to that effect, exhorting all good citizens, by their respect for the laws and their regard for the peace and welfare of the country, to aid the efforts of the public authorities in the discharge of their duties.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed to these presents.

Done at the city of Washington the thirtieth day of October, one thousand eight hundred and fifty-eight, and of the Independence of the United States the eighty-third.

JAMES BUCHANAN.

By the President:
LEWIS CASS, *Secretary of State.*

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[713] *CORRESPONDENCE RELATIVE TO THE MONITORS CATAWBA AND ONEOTA, AT NEW ORLEANS.

Mr. Goñi, Spanish minister, to Mr. Seward, Secretary of State.

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,
Washington, May 23, 1868.

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, has the honor to present to the consideration of the honorable Secretary of State what follows:

It is already a notorious fact, as published by the daily press in the United States, as well as in that of Peru, and neither contradicted nor denied, nor called in question by any one, that the armor-clad ships Catawba and Oneota, bought by Messrs. Swift & Co., of Cincinnati, have been purchased for the government of Peru, to which they at this time belong, and that they are preparing for departure, more or less early, bound for that republic, from the port of New Orleans, where they now actually are. This being understood, the undersigned, repeating the verbal reclamations which he has at various conferences made
[714] upon the subject, now addresses *himself to the honorable Secretary of State, invoking his recognized uprightness, his loyalty toward friendly nations, and the noble perseverance with which he has upheld respect for the laws of neutrality, to the end that he may hinder the departure to sea of the monitors Catawba and Oneota while the state of war exists between Spain and Peru.

The undersigned, on the present occasion, thinks he may hope for the most efficient action from the honorable Secretary of State for most especial and extraordinary reasons. First, if the state of war still subsists, it is not by fault of the Spanish government, which has shown dispositions propitious to the adjustment of a peace worthy and honorable for all parties, having always met the friendly invitations given by the Hon. Mr. Seward, and in consequence suspending active hostilities. Secondly, that the government of Her Catholic Majesty having now presented the question of peace in a positive manner to the honorable Secretary of State, it ought to trust, and does trust, that while Peru and the allied republics do not proffer themselves to enter upon the negotiations proposed, the Government of the United States will not consent that in this country any detriment shall occur to the rights of Spain in derogation of the laws of neutrality.

The undersigned avails of this occasion to reiterate to the honorable Secretary of State the assurance of his highest consideration.

FACUNDO GOÑI.

Hon. WILLIAM SEWARD, *&c., &c., &c.*

[715] *Mr. Goñi, Spanish minister, to Mr. Seward, Secretary of State.*

[Translation.]

LEGATION OF SPAIN IN WASHINGTON,
Washington, June 30, 1868.

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, on referring to his note of the 23d of May last, relative to the monitors Catawba and Oneota, has the honor to call the attention of the honorable Secretary of State once more to the contents of that note.

Two circumstances move the undersigned to insist again upon this affair: First, it is known to the undersigned that the minister of Peru has solicited permission from the Government of the United States to take possession of the monitors, contending that the existing situation between Spain and Peru is not a state of war, which assertion is entirely without foundation; and second, that the monitors now in the port of New Orleans are not apparently sufficiently guarded to prevent them from going to sea, as the undersigned is aware of no official measures having been taken to prevent their departure.

In regard to the assertion of the government of Peru, the undersigned hopes the honorable Secretary has rejected it as it deserves. The state of war between the nations exists so long as the belligerent and interested parties do not stipulate for peace, and in the present case not only has peace between Spain and Peru not been agreed upon, but the government of Peru has not, up to this time, even accepted the
[716] good offices *tendered for that purpose by the Government of the United States.

We cannot conceive, therefore, how the government of Peru could make such a request of the United States, as its grant would imply a violation of the law of nations, a serious offense to the laws of neutrality of this country, and a want of reciprocity in the friendship and conciliatory sentiments manifested by the government of Her Catholic Majesty in accepting the good offices of the Government of the United States for the settlement of the contest. Fortunately the honorable Secretary of State, in his note of the 23d of April, to Mr. Garcia, minister of Peru, expressed his opinion in conformity with this doctrine in judging of the present situation between Spain and Peru, and therefore the undersigned hopes he may be excused for insisting upon that point.

If the government of Peru desires the present situation to be converted into one of peace, why does it not accept the good offices tendered by the Government of Washington? But as it has not accepted them, how can it believe that this Government is to consider the present situation as a state of peace, neither perfect nor imperfect? The undersigned trusts that the honorable Secretary of State will reject such unfounded pretensions as exceedingly inconsistent. From what has been said, the undersigned feels obliged to insist upon the adoption of peremptory measures to prevent the departure of those monitors. It appears from common report that the said vessels are not in the
[717] hands of the local authorities, and it is not known *what order has been issued about them.

The undersigned, therefore, once more invokes justice from the Government of the United States, and begs that immediate measures be taken to detain the monitors Catawba and Oneota.

The undersigned hopes the honorable Secretary of State will be

pleased to communicate to him the resolutions adopted in conformity with the claims of right and justice.

The undersigned embraces the occasion to renew to the honorable Secretary of State the assurances of his high consideration.

FACUNDO GOÑI.

Hon. WILLIAM H. SEWARD, *&c., &c., &c.*

Mr. Seward, Secretary of State, to Mr. Goñi, Spanish minister.

DEPARTMENT OF STATE,
Washington, July 9, 1868.

The undersigned Secretary of State of the United States has the honor to acknowledge the receipt of a note from Mr. Goñi, minister plenipotentiary of Her Catholic Majesty, written on the 30th of June last, in which Mr. Goñi directs the attention of the undersigned to the affair of the monitors Catawba and Oneota. Mr. Goñi mentions two circumstances which move him to insist upon the detention of those monitors, namely, first, that the minister plenipotentiary of Peru has solicited permission from the United States Government to take possession of
[718] the monitors, contending that the existing situation *between Spain and Peru is no longer one of war, which assertion Mr. Goñi pronounces to be entirely without foundation; and secondly, that the monitors now in the port of New Orleans are not apparently sufficiently guarded to prevent them from going to sea, as the undersigned is aware of no official measures having been taken to prevent their departure.

Mr. Goñi dwells upon the fact that the United States have tendered their good offices to Spain and to her antagonists, the Pacific republics, and that while Spain has promptly expressed her disposition to accept those good offices with a view to the establishment of peace, Peru has not accepted them, nor given any conclusive reply upon the subject. Mr. Goñi argues from this fact that the government of Peru cannot rightfully claim that the Government of the United States shall, during these overtures, pronounce the state of war to be closed and the state of peace to have been reached by the silent consent and concurrence of the parties.

Upon the grounds thus mentioned, Mr. Goñi feels himself obliged to insist upon the adoption of peremptory measures to prevent the departure of the monitors in question. He fortifies this position by stating from common report that the vessels are not in the hands of the local authorities, and it is not known what orders have been issued about them. He begs, therefore, that immediate measures be taken to detain the monitors Catawba and Oneota.

The undersigned has the honor, in reply, to inform Mr. Goñi,
[719] in the first place, that the Peruvian government, *on its part, insists that the situation of war between herself and allies on the one part, and Spain on the other, has practically come to an end by the cessation of all hostilities on either side since the second day of May, 1866.

The undersigned has further the honor to inform Mr. Goñi that the Peruvian government alleges in support of its position the fact that Chili and Spain, Chili being one of the allied belligerents and Spain the other belligerent, have, in the present year, voluntarily joined themselves together in peaceful and friendly concert and co-operation in waiving

objections to the clearance from British ports of ships of war for the respective parties. So far as this Department is informed, this statement is not controverted by the Spanish government, and Peru insists that the proceeding is equivalent to an acknowledgment on the part of Spain of the pretensions made by Peru that the situation of war between the belligerent republics and Spain has come to an end. Peru argues in this respect that Spain cannot claim before the government of Great Britain to be at peace, and at the same time claim before the Government of the United States to be at war with Peru and her allies, the position of the United States and Great Britain in regard to the belligerents being identical.

Mr. Goñi is informed, in the third place, that the Peruvian government distinctly proposes to the Government of the United States that, if it shall consent to the clearance of the Catawba and Oneota, the Peruvian government will give adequate security that those vessels
[720] shall not be employed *in any hostile proceeding against Spain or any other nation on their way to the port of Callao, in the Pacific, but shall keep the peace until the vessels shall have arrived in the harbor of Callao, there to be used for purposes of domestic defense and security.

Mr. Goñi is further informed, in the fourth place, that the House of Representatives having taken the subject of the sale and proposed departure of these vessels into consideration with a view to some possible legislative action thereupon, directions have been given by the President that those vessels shall not receive clearance or be permitted to depart while the subject is engaging the attention of Congress. The vessels are for this reason detained at present, and will be so temporarily detained, whatever appearances or presumptions to the contrary may anywhere exist.

In consequence of the proceedings of the House of Representatives which have been referred to, it seems to the President that the occasion has not yet arrived when it will be necessary for him to decide the grave question which has been raised before this Government between the ministers of Spain and Peru, namely, the question whether the war which was heretofore waged between those nations has been practically brought to an end or not. Frankness, however, obliges the undersigned to say that unless some unforeseen circumstances shall soon occur, the time for acting upon that question would seem to be near at hand.

The undersigned freely admits the difficulties which are likely
[721] *to attend the decision of the question.

It is certain that a condition of war can be raised without an authoritative declaration of war, and, on the other hand, the situation of peace may be restored by the long suspension of hostilities without a treaty of peace being made. History is full of such occurrences. What period of suspension of war is necessary to justify the presumption of the restoration of peace, has never yet been settled, and must in every case be determined with reference to collateral facts and circumstances.

The proceedings of Spain and Chili which have been referred to, although inconclusive, require an explanation on the part of either of those powers which shall insist that the condition of war still exists. Peru, equally with Spain, has as absolute a right to decline the good offices or mediation of the United States for peace as either has to accept the same. The refusal of either would be inconclusive as an evidence of determination to resume or continue the war. It is the interest of the United States, and of all nations, that the return of peace, however it may be brought about, shall be accepted whenever it has

become clearly established. Whenever the United States shall find itself obliged to decide the question whether the war still exists between Spain and Peru, or whether that war has come to an end, it will make that decision only after having carefully examined all the pertinent facts which shall be within its reach, and after having given due con-
[722] sideration to such representations as shall have been *made by the several parties interested.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

Señor Don FACUNDO GOÑI, *&c., &c., &c.*

Mr. Goñi, Spanish minister, to Mr. Seward, Secretary of State.

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,
Washington, July 29, 1868.

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, has the honor to reply to the note in the matter of the monitors Catawba and Oneota, which the honorable Secretary of State of the United States was pleased to address to him on the 9th instant, and passes on to notice the contents thereof.

The honorable Secretary of State, in the note referred to, informs the undersigned that the government of Peru maintains that the state of war between Spain and the allied republics has terminated, alleging, for reason, that active hostilities have been suspended for more than two years, and quoting that Spain and Chili had reciprocally consented to the departure of some vessels of their respective flags, which were detained in British ports, from which fact the government of Peru infers that Spain cannot say she is at peace in respect of the British government, and say that she is at war in respect of the Government of the United States.

[723] *The undersigned can do no less than state that the singular pretension of the government of Peru causes him extreme surprise. To say that a state of war does not exist, when, nevertheless, no proposition of peace has been accepted, is an affirmation equally gratuitous and new, which it is not necessary to contest.

As to the facts alleged, no one of them implies, even remotely, the cessation of war. The fact of hostilities being suspended on the part of Spain is the consequence of the acceptance of the good offices offered to the belligerents by the Government of the United States on the 20th of December, 1866. In respect to the departure of Spanish and Chilian vessels, detained by the government of Great Britain in fulfillment of her duties as a neutral power, the undersigned does not know, with exactness, what happened in London, although he has reasons for thinking that there was not any formal and direct agreement between the representatives of both nations; but at all events, and even if such had existed, that could not alter or modify the situation in which both parties find themselves. To pretend that the consent to the departure of the vessels respectively means a declaration of a state of peace would be equivalent to maintaining that any special agreement of two belligerent states, whether about an exchange of prisoners, or furnishing supplies, or any other partial and limited point, would imply the termination of the war.

It is, therefore, not a logical consequence which the Peruvian

[724] *government deduces from the act which occurred in London, nor the signification attached to it well founded. Besides, it is proper to note the fact that, whatever might be the importance of the arrangement of London, that arrangement took place between Spain and Chili, and not between Spain and Peru; and the Peruvian government, however much allied with that of Chili, in the contest with Spain, could not invoke in its favor a special agreement made with another state.

It follows from what has been said that although Spain, through the effect of its sincere desire for peace, has suspended active hostilities, she still finds herself in a state of war, and can do no less than maintain the rights which correspond with such condition according to the laws of nations while that state continues to subsist, and a solution satisfactory to both belligerent parties is not reached.

The honorable Secretary of State, in connection with this question, discusses in his note a grave matter which the undersigned can do no less than notice. The honorable Secretary states that because of the interference of the House of Representatives in the question of the monitors Catawba and Oneota, the President may not deem the occasion opportune for deciding whether the war between Spain and the allied republics has or has not practically come to an end; but considers that it is nearly time to decide upon this, and the more so, that he recognizes the difficulties which that solution presents. He adds, that inasmuch as a [725] state of war may be established *without a previous declaration, so also may a state of peace be re-established without an express treaty; and, as it has not as yet been settled how much time must elapse from the suspension of hostilities until peace may be presumed to be re-established, it ought to be decided in view of the facts and circumstances of each case; and concludes by declaring that the United States, when they consider themselves obliged to determine whether war still exists between Spain and Peru, or has come to an end, such decision will be reached after having carefully examined the facts and given due consideration to the representations of the parties interested.

The undersigned cannot assent entirely to the preceding assertions, but will confine himself to observing only that the state of war and state of peace between two nations, first of all, and beyond all, are facts which depend upon the will of the parties interested, it belonging to them to decide by common accord what is the state in which they find themselves, and what the character of their respective relations.

As for the determinations which the United States may believe themselves to be obliged to adopt under given circumstances, the Government of the United States, and especially the honorable Secretary of State, on whom this matter is incumbent, has too much enlightenment and uprightness to separate himself in these matters from the recognized principles of the law of nations and international usages, and thus he disposes of the finale of the note of the honorable Secretary of State.

Besides, the Government of the United States holding on the [726] present *occasion the character of mediator, in virtue of the acceptance of its good offices on the part of Spain, the undersigned cannot for a moment doubt that while it holds that trust, it will respond with its accustomed loyalty to the confidence of the Spanish government.

In the last place, the Secretary of State informs the undersigned that by reason of the above-mentioned intervention of the House of Representatives about the sale and departure of the monitors, orders were dispatched by the President that clearances should not be given to them, nor that they should be permitted to go to sea, and that in consequence

the vessels are detained, and will so continue temporarily. The undersigned, as is just, appreciates the issuance of such orders, and must hope that, the detention of the vessels being found just in itself by the provisions of the law of neutrality and the prescriptions of international law, such detention will not cease until the state of war ceases. As for what the government of Peru may have offered to that of the United States as security that the monitors shall not be employed in hostilities against Spain, the undersigned will make no reply, not having any cause to doubt the sincerity and good faith of such offers; but that circumstance cannot discharge him from his duty of making just reclamations.

The undersigned recapitulates the contents of the present note by stating that Spain is disposed to re-establish honorably her
[727] friendly relations with the allied republics, and *therefore desires to return to the state of peace, but that unfortunately she now still finds herself in a state of war.

That neither the suspension of hostilities nor the concerted departure of the Spanish and Chilian vessels from London changes or alters the existing status.

That the determination of said state of war cannot be brought about except by the declaration of the interested belligerent parties.

That the state of war existing, Spain can do no less than maintain the rights which belong to her, and reclaim their observance by neutral governments.

That in addressing the Government of the United States, which combines the character of neutral with that of mediator, Spain finds herself assisted by a double right to request the detention of the monitors Catawba and Oneota, belonging to Peru.

And, in conclusion, that he hopes that the Government of the United States, as friend and neutral, will continue to cause to be respected the right and the laws of neutrality, and that as mediator it may succeed in obtaining a solution honorable to the contending parties and beneficial to the interests of all nations.

The undersigned reiterates again to the honorable Secretary of State the assurance of his highest consideration.

FACUNDO GOÑI.

Hon. WILLIAM H. SEWARD, *&c., &c., &c.*

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[728] **Mr. Goñi, Spanish minister, to Mr. Seward, Secretary of State.*

[Translation.]

LEGATION OF SPAIN IN WASHINGTON.
Washington, November 24, 1868.

At one of the latest conferences in relation to the monitors Catawba and Oneota, purchased for the government of Peru, the honorable Secretary of State of the United States, after again presenting some observations expressed in his note of the 9th of July referring to this matter, was pleased to make manifest to the undersigned that the Spanish government could, without obstacle of any kind, consent to the departure of those vessels in consideration of two special circumstances, to wit:

1. That complete peace existing in fact between Spain and Peru, and this peace in fact being very shortly to be converted into peace accord-

ing to law, as recent communications received at the Department of State demonstrate, and especially the protocol of the conference which, on the 1st day of September last, was observed in Lima by the representatives of the four allied republics, in view of so near and probable an event, the acquiescence of the Spanish government would be justifiable in respect of the immediate departure of the monitors, which need to avail themselves of the fair weather of the southern hemisphere, and would moreover signify a deference very remarkable and worthy of esteem.

2. That this Government having assurance that the monitors are not to exercise any hostilities against Spain, not only because of the [729] disposition which animates the government *of Peru, but also because the minister of that republic has made so solemn promise thereof, as the honorable Secretary of State has been pleased to assure the undersigned in the said note of the 9th of July, that Spain cannot entertain, in this respect, the least reason for withdrawal or apprehension.

In consequence of the precedent manifestation of the Secretary of State, the undersigned finds himself fully authorized to declare that the present government of Spain, desirous, as the representative of the the new political situation created in that country, to give proof of its friendly attitude toward the Hispano-American republics of the Pacific, ceases to oppose the departure to sea of the monitors Catawba and Oneota, hoping only that the honorable Secretary of State will please to assure him, in conformity with the offers made by the minister of Peru, that the said vessels will not attempt to commit any act offensive to Spanish interests during their voyage to the Pacific.

The undersigned has the honor to communicate the foregoing to the honorable Secretary of State of the United States, and awaiting reply to the present note, avails of this fresh occasion to reiterate the assurance of his highest consideration.

FACUNDO GOÑI.

Hon. WILLIAM H. SEWARD, *&c., &c., &c.*

Mr. Seward, Secretary of State, to Mr. Goñi, Spanish minister.

DEPARTMENT OF STATE,
Washington, November 30, 1868.

SIR: Your note of the 24th instant has been received with [730] high satis*faction.

I give you herewith, and with the assent of Señor Garcia y Garcia, minister of Peru, extracts from two notes which have been received from that distinguished gentleman, relating to the proposed departure of the Oneota and Catawba for a Peruvian port. It gives me pleasure to add that this Government reposes entire confidence in the fulfillment of the assurances on that subject which appear in those notes.

I avail myself of the occasion, sir, to offer to you assurances of my very high consideration.

WILLIAM H. SEWARD.

Señor Don FACUNDO GOÑI, *&c., &c., &c.*

Mr. Garcia, Peruvian minister, to Mr. Seward, Secretary of State.

[Translation.—Extract.]

CLARENDON HOTEL, *New York, May* 8, 1868.

SIR: If, in order to your acceding to the intimation I have hinted at, it were necessary to promise positively that the vessels which go from the United States shall proceed on the route to Peru without attacking or provoking attacks from other nations, without any exception, nor to cause injury nor to offer threats to their possessions, I hold in pledge to the United States the honor of the Peruvian government from this moment.

I avail myself, with satisfaction of this opportunity to renew to your excellency the assurances of the high respect and esteem with which I subscribe myself your very obedient servant,

JOSÉ ANTONIO G. Y GARCIA.

His Excellency WM. H. SEWARD,
&c., &c., &c., Washington.

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[731] **Mr. Garcia, Peruvian minister, to Mr. Seward, Secretary of State.*

[Translation.—Extract.]

CLARENDON HOTEL, *New York, July* 28, 1868.

SIR: the foregoing would undoubtedly suffice for the end in view when addressing an upright and enlightened government, such as that of your excellency's, but the government of Peru voluntarily and deliberately desires to offer to yours the most perfect security as to the rectitude of its intentions in sending those vessels to the coasts of the republic, and for that purpose has instructed me to reiterate, expressly in its name, to the United States Government, the formal promise that the monitors will leave for the Pacific without attacking, or in any way molesting, any vessels or possessions of Spain, and without committing any act of hostility, directly or indirectly, against the flag of that nation, either at sea or on land, to which they may not be provoked. The honor of the Peruvian government, I again repeat on this occasion, guarantees to your excellency the strict fulfillment of this solemn promise.

I have the honor of subscribing myself, with the highest consideration, your excellency's most humble and obedient servant,

JOSÉ ANTONIO G. Y GARCIA.

His Excellency WILLIAM H. SEWARD,
Secretary of the United States of America, Washington.

Mr. Roberts, Spanish minister, to Mr. Fish, Secretary of State.

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,
April 3, 1896.

[732] **The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has become informed, by news communicated**

to him from the Cuban authorities, confirmed through other channels, that one of the Peruvian monitors which the Spanish squadron allowed to leave one of the southern ports of the United States, instead of continuing her course towards the waters of the Pacific, in accordance with the solemn promise made to the Government of this Republic by the accredited minister of Peru, Mr. Garcia, has violated this compromise by returning to the waters of the island of Cuba, and entering one of its ports called Puerto Naranjo.

The undersigned considers it his duty to call to this matter the attention of the honorable Secretary of State, to whom he doubts not such procedure will cause a feeling of disgust, adding that one of the Spanish war-steamers, the Fernando el Catolica, accompanied the said steamer to Inagua, which is at the extreme end of the island, and gave up the watchfulness which he exercised towards them, in the assurance that they would not fail to the agreement made with Spain through the mediation of the Government of the United States.

The undersigned thinks it proper that the honorable Secretary of State should have exact information about the matter, and it is the purpose of this note to send him herewith exact copies of what passed at the time my government acceded to the departure of the steamers mentioned.

[733] The undersigned avails of this occasion to reiterate to the honorable Secretary of State the assurance of his highest *consideration.

MAURICIO LOPEZ ROBERTS.

The Honorable SECRETARY OF STATE
Of the United States.

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, April 7, 1869.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of the 3d instant from Don Mauricio Lopez Roberts, envoy extraordinary and minister plenipotentiary of Spain, stating that he had been informed by the Cuban authorities, which information was confirmed through other channels, that one of the Peruvian monitors had entered the Cuban port of Naranjo in violation of the promise made by Señor Don Garcia y Garcia, minister plenipotentiary of Peru, before those vessels left the United States.

In reply the undersigned has the honor to state that this Department has no other information on the subject than that contained in Mr. Roberts's note. I appears, however, on examining the terms of Mr. Garcia's notes on the occasion of the departure of the monitors, that they do not contain any pledge that those vessels shall not enter a Spanish port under any circumstance, but that they shall not, on their way to Peru, attack the possessions of Spain. Mr. Roberts does not allege that any such attack has been made by the monitor to which he refers; consequently the pledge given by Mr. Garcia cannot be regarded as

[734] violated until such attack shall *have taken place. The mere entrance of one of those vessels into a Cuban port cannot justly be regarded as a hostile act. It may have been compelled by stress of weather or other similar cause. Mr. Roberts is aware that the monitors referred to were not intended for sea-going vessels. Indeed, they cannot

navigate the ocean unless attended or towed by other steamers or vessels; consequently they cannot remain long at sea without proceeding to some port for the purpose of replenishing their fuel and other supplies.

Until authentic information to the contrary shall have been received, it must be presumed that, if the monitor to which Mr. Roberts refers has in point of fact entered a Cuban port, that entrance was occasioned by some such necessity as that adverted to.

The undersigned avails of this occasion to offer to Mr. Roberts the assurance of his high consideration.

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS.

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, April 14, 1869.

SIR: I have the honor to inclose for your information the accompanying transcript of a note of the 9th instant, addressed to me by the minister of Peru, in which is given the substance of communications
[735] received by him from the *commander of the Peruvian squadron, to which the monitors Atahualpa and Manco Capac belong, especially with regard to the visit of the latter on a late occasion to the port of Naranjo, on the northern coast of Cuba.

Not doubting that you will receive with satisfaction the statement of Mr. Garcia, I remain, with the highest consideration, your obedient servant,

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS.

Mr. Roberts, Spanish minister, to Mr. Fish, Secretary of State.

[Translation.]

LEGATION OF SPAIN AT WASHINGTON.
April 15, 1869.

The minister plenipotentiary of Spain has had the honor to receive the note of 14th instant, in which the honorable Secretary of State pleased to send him copy of a communication from the minister of Peru, dated the 9th, explaining the causes which gave occasion for the touching at Puerto Naranjo, in the island of Cuba, of the Peruvian monitor Manco Capac.

The undersigned has already sent to his government these satisfactory communications, and presents his thanks to the honorable Secretary Fish for his attention, availing himself of this occasion to offer to him the expression of his highest consideration.

MAURICIO LOPEZ ROBERTS.

The Honorable SECRETARY OF STATE
Of the United States.

[737] *CORRESPONDENCE RELATIVE TO THE FLORIDA, AT PHILADELPHIA.

Mr. Fish, Secretary of State, to Mr. Boutwell, Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, April 3, 1869.

SIR: The chargé d'affaires of Hayti has addressed a note to this Department, stating that persons acting for those he calls rebels in his country are fitting out a steamer called the Florida, at Chester, Pennsylvania, for the service of the enemies of his government. He consequently asks that the clearance of that vessel may be prevented.

I will consequently thank you to cause inquiry to be made into the case, and to adopt such measures as the result may warrant under the law.

I have the honor to be, sir, yours, &c.,

HAMILTON FISH.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

Mr. Fish, Secretary of State, to Mr. Hoar, Attorney-General.

DEPARTMENT OF STATE,
Washington, April 3, 1869.

[738] *SIR: Mr. Evariste La Roche, the chargé d'affaires of Hayti, has addressed a note to this Department, stating that he has information to the effect that a steamer named Florida is in the course of being fitted out at Chester, Pennsylvania, for the service of the insurgents in arms against his government.

I will consequently thank you to instruct the proper officers to prosecute any person who, in the proceeding referred to, may violate the law of the United States.

I have the honor to be, sir, yours, &c.,

HAMILTON FISH.

Hon. E. ROCKWOOD HOAR,
Attorney-General.

Mr. Hoar, Attorney-General, to Mr. Fish, Secretary of State.

ATTORNEY-GENERAL'S OFFICE,
Washington, April 10, 1869.

SIR: I am in the receipt of a letter from you of the 3d instant, conveying certain information received by your Department from the chargé d'affaires of Hayti, relative to the fitting out of a steamer named Florida, at Chester, Pennsylvania, for the service of the insurgents now in arms against his government.

I inclose you herewith a copy of a communication addressed to the United States attorney for the eastern district of Pennsylvania upon this subject.

I have the honor to be yours, &c.,

E. R. HOAR,
Attorney-General.

Hon. HAMILTON FISH,
Secretary of State.

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[739] **Mr. Hoar, Attorney-General, to the district attorney of the eastern district of Pennsylvania.*

WASHINGTON, *April* 10, 1869.

SIR: I inclose herewith a copy of a letter addressed to this office by Hon. Hamilton Fish, Secretary of State, stating that he has received information to the effect that a steamer named the Florida is in course of being fitted out at Chester, Pennsylvania, for the service of the insurgents in arms against the government of Hayti.

You will please take such steps and institute such proceedings as seem to be necessary to prevent or to punish a violation of the laws of the United States by the parties who may be engaged in any illegal transaction connected with this vessel. You will report also to this office any reliable information upon the subject, and any action that you may take in pursuance of these instructions.

Very respectfully, yours, &c.,

E. R. HOAR,
Attorney-General.

UNITED STATES ATTORNEY,
Eastern District Pennsylvania, Philadelphia.

[For inclosure see ante, page 725.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Fish, Secretary of State.

TREASURY DEPARTMENT,
Washington, April 12, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, relative to the fitting out at Chester, Pennsylva-
[740] nia, of the steamer *Florida, which the chargé d'affaires of Hayti had advised the Department of State was for the service of the enemies of his government, and whose clearance, therefore, he asked might be prevented; and you request this Department to cause inquiry to be made, and to adopt such measures as are proper in the premises. In reply, I have to inform you that a copy of your communication was transmitted to the collector at Philadelphia, with instructions to report if there were any grounds for the suspicion entertained by the Haytian chargé, and be vigilant to enforce the provisions of the act of 20th April, 1818.

On the 8th instant the collector made his report, stating that he had fully advised the commanding officer of the revenue-steamer Seward what course to pursue, and had also communicated with the assistant

surveyor at Chester in relation to the matter, a copy of whose letter was inclosed, and herewith I transmit copies of these documents. I also inclose you a copy of the instructions of this Department to the collector of Philadelphia, of this day's date, directing him, if the case demanded it, to take the bond provided by the first section of the act above cited.

With great respect,

GEO. S. BOUTWELL,
Secretary of the Treasury

Hon. HAMILTON FISH,
Secretary of State.

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[741] *[Inclosure.]

Mr. Moore, collector of customs, to Mr. Boutwell, Secretary of the Treasury.

CUSTOM-HOUSE, PHILADELPHIA,
Collector's Office, April 8, 1869.

SIR: I have received your letter of the 5th instant, inclosing copy of letter from Secretary of State in relation to an apprehended violation of the neutrality laws in fitting out steamer Florida at Chester, Pennsylvania.

I have fully advised the commanding officer of the revenue-steamer Seward what course to pursue, and have also communicated with assistant surveyor at Chester in relation to the matter, a copy of whose letter is herewith inclosed.

Very respectfully, yours, &c.,

HENRY D. MOORE,
Collector of Customs.

Hon. GEO. S. BOUTWELL,
Secretary of the Treasury, Washington, D. C.

[Inclosure.]

Mr. Litzenberg, surveyor, to collector of customs, Philadelphia.

OFFICE SURVEYOR OF CUSTOMS,
Chester, Pennsylvania, April 8, 1869.

SIR: In answer to your inquiries in regard to the steamer Florida, now undergoing repairs at this port, I have the honor to say that I have made diligent inquiry in regard to her destination, and from information obtained, find she is bound for Rio, South America. The Florida
[742] belongs to Frederick W. Clapp, of Boston, No. 17 Rowe's *wharf, of whom any information in regard to her destination can be obtained.

Respectfully, yours, &c.,

SEÑOR LITZEMBERG,
Surveyor.

COLLECTOR OF CUSTOMS,
Philadelphia.

Mr. Boutwell, Secretary of the Treasury, to collector of customs, Philadelphia.

TREASURY DEPARTMENT,
Washington, April 12, 1869.

SIR: I am in receipt of your letter of the 8th instant, relative to the steamer Florida, alleged to be fitting out at Chester, Pennsylvania, for the service of the enemies of the government of Hayti, and stating that you had fully advised the commanding officer of the revenue-steamer Seward what course to pursue, and communicated with the assistant surveyor at Chester concerning the matter, a copy of whose letter you inclose.

In reply, the Department approves your action in the premises, and if the case demands it you will please take the bond provided for by the first section of act of 20th April, 1818, chapter 88, page 447, Statutes at Large, vol. iii.

Very respectfully, yours, &c.,

GEO. S. BOUTWELL,
Secretary of the Treasury.

COLLECTOR OF CUSTOMS,
Philadelphia.

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[743] **Mr. Hoar, Attorney-General, to Mr. Smith, district attorney, Philadelphia.*

WASHINGTON, *May* 14, 1869.

SIR: It has been orally reported to the Department of State, by the minister of Spain, "that the steamer Atlanta at Philadelphia has been sold to the Cubans, and that the steamer Florida at Chester, Pennsylvania, is being fitted out under suspicious circumstances." To this last-named vessel the diplomatic representative of Hayti has also called attention. You are referred to the copy [1]of the letter to the United States marshal for the southern district of New York, sent you inclosed with my letter of the 12th instant, for general instructions in the premises.

Whenever complaint is made against any vessel on trustworthy evidence sufficient to establish before a court of justice probable cause to believe that such vessel is forfeitable for a violation of the neutrality laws, you are instructed to file a libel and arrest the vessel.

Very respectfully,

E. R. HOAR,
Attorney-General.

AUBREY H. SMITH, Esq.,
United States Attorney, Philadelphia.

Mr. Fish Secretary of State, to Mr. Hoar, Attorney-General.

[744] *DEPARTMENT OF STATE,
Washington, May 15, 1869.

SIR: I have the honor to inclose a copy of a translation of a note of the — instant, addressed to this Department by Mr. Evariste La Roche,

[1]For copy of this letter see post p. 729.

chargé d'affaires of Hayti, setting forth the reasons he still entertains for the opinion that the steamer Florida at Chester, Pennsylvania, has been prepared and is about to start for the purpose of engaging in hostilities against his government. The expediency of requiring the security which Mr. La Roche indicates against a violation of the law of the United States in this case is submitted to your early consideration.

I have the honor to be, sir, yours, &c.,

HAMILTON FISH.

Hon. E. ROCKWOOD HOAR,
Attorney-General.

Mr. Hoar, Attorney-General, to Mr. Smith, district attorney.

[Telegram.]

WASHINGTON, *May* 18, 1869.

AUBREY H. SMITH, Esq., *United States Attorney, Philadelphia:*

Look out for the Florida. On proof of probable cause, libel and arrest her.

E. R. HOAR.
Attorney-General.

Mr. Hoar, Attorney-General, to Mr. Andrews, United States marshal.

WASHINGTON, *May* 18, 1869.

[745] *SIR: I inclose for your information a portion of the translation of a note, sent by Mr. Evariste La Roche, chargé d'affaires of Hayti, to the Secretary of State, and by the Secretary of State to this office. I send inclosed, also, a copy of a letter dated May 10, sent by this office to the marshal of the United States for the southern district of New York, which you will consider as general instructions in cases of any violation of the neutrality laws within your district. You are expected to receive any information that may be given you by the representatives of foreign governments, as well as by other persons, but you are not expected to engage in general correspondence with foreign representatives upon the subject of the neutrality laws, although it is deemed entirely proper that you should acknowledge the receipt of any communication that they may send you, and should answer any direct inquiry as to whether any specified person or vessel has been arrested and proceedings instituted for punishment or forfeiture.

Very respectfully, yours, &c.,

E. R. HOAR,
Attorney-General.

GEORGE S. ANDREWS, Esq.,
United States Marshal, Boston, Massachusetts.

[Inclosure.]

Mr. Hoar, Attorney-General, to Mr. Barlow, United States marshal.

WASHINGTON, *May* 10, 1869.

[746] *SIR: Your letter of the 6th instant and your letter of the 8th instant, both addressed to the Secretary of State, relating to the neutrality laws of the United States, and your duties as marshal in reference thereto, have been sent to this office.

The first seven sections of chap. 88 of the acts of Congress of 1818, (3 Statutes at Large, 447,) provide for the punishment of persons and the forfeiture of property, which are of course to be effected by the judgment of a court, in a suit commenced by indictment or libel of information.

Such suits will, in proper cases, be instituted by the district attorney, and you, as marshal, will arrest the person or property, pursuant to the warrant addressed to you from the court. Sections 8 and 9 of this act empower the President, or such other person as he shall have empowered for that purpose, to employ the land or naval forces, or the militia, for certain purposes named in these sections. Sections 11 and 12 impose in the cases named therein on owners or consignees of vessels certain duties, and give an authority to collectors of customs to detain vessels or to take a bond.

Whether suits, either criminal or for forfeiture, are to be instituted, must, so far as the local officers are concerned, be determined by
[747] the district *attorney, upon such evidence as may be known to him; and you have the well-known right of marshals to call upon the *posse comitatus* to aid you if you are obstructed in the service of process. So far as sections 8 and 9 confer a larger power than this upon the person empowered by the President, pursuant to these sections such persons must be specially empowered for that purpose; and you do not have this power by virtue of your office as marshal.

It is plain that to efficiently prevent any violations of this act, or to surely punish them if committed, the cordial and active co-operation of the district attorney, marshal, and collector of the port is requisite. Any information that you may obtain in any manner which you deem worthy of any notice should be immediately communicated by you to the district attorney, and also, if relating to a vessel, to the collector of the port. It is not deemed best at present to authorize or require you to employ detectives for the special purpose of discovering violations of the provisions of this act, but you and your deputies are expected to receive all information that may be offered, and to be attentive to all matters of suspicion that come within your knowledge, and in cases
[748] where your action is required, to be vigilant, *prompt, and efficient. I will thank you to communicate to me from time to time any information that you deem trustworthy and important.

The local officers are in no event to wait for instructions before acting in cases where they are convinced that a violation of this act has been committed, and where delay may prevent its punishment, but are to act at once upon their best judgment, and immediately to report such action to this office. Communications from you, unless called for by other Departments, or unless the subject matter pertains particularly to such Department, should be made to this office.

Very respectfully,

E. R. HOAR,
Attorney-General.

FRANCIS C. BARLOW, Esq.

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[749] *Mr Hoar, Attorney-General, to Mr. Fish, Secretary of State.*

ATTORNEY-GENERAL'S OFFICE,
Washington, May 18, 1869

SIR: I have the honor to acknowledge the receipt of your letter of the 15th instant, inclosing a copy of a translation of a note of the 12th

instant, addressed to the Department of State by Mr. Evariste La Roche, chargé d'affaires of Hayti, all relating to the steamer Florida at Chester, Pennsylvania. A copy of the translation of the note has been by me sent to the Secretary of the Treasury, that he may issue any instructions to the collector of the customs for the revenue district within which Chester is situated that he deems best. Instructions relating to this steamer have already been sent by this office to the marshal and attorney of the United States for the eastern district of Pennsylvania.

The United States attorneys and marshals are instructed to receive any information that may be offered tending to show that any violation of the neutrality laws has been committed or attempted, as well as to be attentive themselves to any matters of suspicion that may come within their knowledge, and whenever complaint is made against any vessel on trustworthy evidence sufficient to establish before a court of justice, probable cause to believe that such vessel is forfeitable for a violation of the neutrality laws, they are instructed to file a libel and detain the vessel. The propriety of your informing Mr. La Roche that he may communicate any facts within his knowledge relating to a violation of the neutrality laws directly to a United States attorney, is submitted for your consideration.

750] *Very respectfully, your obedient servant,

E. R. HOAR,
Attorney-General.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Hoar, Attorney-General, to Mr. Fish, Secretary of State.

ATTORNEY-GENERAL'S OFFICE,
Washington, May 18, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of this date, inclosing a copy of a note of the 15th instant, addressed to your Department by Mr. Evariste La Roche, relative to the recent departure from Boston of an armed vessel ostensibly for Jamaica, but really, as Mr. La Roche charges, for St. Marc, in Hayti.

Instructions appropriate to the case have this day been sent to the United States attorney and marshal for the district of Massachusetts.

Very respectfully, your obedient servant.

E. R. HOAR,
Attorney-General.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Fish, Secretary of State, to Mr. Murray.

DEPARTMENT OF STATE,
Washington, July 29, 1869.

751] *SIR: I have received your letter of the 28th July, asking me to agree, on the part of this Department, to the delivery by you of an armed vessel to the Haytian Republic in the harbor of Port au Prince, without molestation on the voyage.

In reply, I have to say that there does not appear, in the case that

you present, to be any propriety in an interference in this matter by this Department, the Haytian nation being at peace with the United States, and with all the world so far as we have any official authentic information. If a state of civil strife prevails there, it is one of which this Government has taken no cognizance.

I am, sir, your obedient servant,

HAMILTON FISH.

R. MURRAY, Esq.,
132 *Front street, New York.*

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, October 7, 1869.

SIR: The Department has information that the iron-clad Atlanta, a vessel captured during the late rebellion, and sold by the Government in May last, is now fitting out at the port of New York, as it is understood, for a voyage to Port au Prince, in Hayti, for delivery to the Haytian government, with which, it is represented, an executory contract for the sale of the vessel has been made. The Atlanta is to be armed and to carry as passengers one admiral and other officers of the Haytian navy. This information is given by a citizen of the United States claiming to be the present owner of the vessel, with a view to obtain the sanction of this Government to its voyage. It is communicated to you to enable you to institute such inquiries and take such action as you may deem necessary.

I avail myself of this occasion, sir, to offer to you assurances of my high consideration.

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS, &c., &c., &c.

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[753] *CORRESPONDENCE RELATIVE TO THE SPANISH GUNBOATS AT NEW YORK.

Vice-Admiral Porter, for Secretary of Navy, to Mr. Fish, Secretary of State.

NAVY DEPARTMENT,
Washington, May 15, 1869.

SIR: As the inclosed information may be of use to you, I beg leave to send it.

Very respectfully,

DAVID D. PORTER,
Vice-Admiral, for Secretary of the Navy.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure.]

The Spanish government have contracted for thirty light-draught boats, about one hundred and sixty tons each, with double screws, and not to draw over five feet water. Of these, fifteen to be built in New York, by Poillon, Stack, and others; fifteen to

be built at Mystic, Connecticut, by Mallory and others. The engines are to be
[734] built by Delamater, of New York. Dispatch to be used, as they are wanted *immediately, and are expected to be ready in from sixty to ninety days.

There is also in New York an admiral or commodore of the Spanish navy to superintend their construction, and he is waiting orders from Havana to buy other boats now ready here—old blockaders, &c.

Mr. Davis, Acting Secretary of State, to Mr. Robeson, Secretary of the Navy.

DEPARTMENT OF STATE,
Washington, August 3, 1869.

SIR: I have the honor to inclose a translation of a note received this day from the minister from Peru, in which he informs this Department that, a state of war still existing between Spain and Peru, the Spanish government are nevertheless constructing, at the places indicated in his note, thirty gun-boats equipped for war, which may be used to the detriment of Peru.

Instructions have been sent by the Attorney-General to the district attorney of New York to take active steps for preventing the sailing of such of these gun-boats as come within his jurisdiction, and I have now to request of the Navy Department to direct the naval force
[735] in the bay and harbor of *New York to co-operate with that officer in what he may do to carry out his instructions.

I have the honor to be, &c.,

J. C. B. DAVIS,
Acting Secretary.

Hon. GEORGE M. ROBESON,
Secretary of the Navy.

Vice-Admiral Porter, for Secretary of the Navy, to Mr. Fish, Secretary of State.

NAVY DEPARTMENT,
Washington, August 4, 1869.

SIR: I have the honor to acknowledge the receipt of your communication in relation to the Spanish gun-boats.

Orders have been issued to the commanding officer at New York to afford all the aid in his power to assist in preventing their departure, and three men-of-war have been ordered to that place.

I have the honor to be, &c.,

DAVID D. PORTER,
For Secretary of Navy.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Field, Acting Attorney General, to Mr. Davis, Acting Secretary of State.

ATTORNEY-GENERAL'S OFFICE,
Washington, August 4, 1869.

SIR: I have received your letter of the 3d instant, with a copy of the note of the Peruvian minister inclosed, all relating to the Span-

[756] ish gun-boats. On the 3d instant I sent to the attorney of the United States, at New York City, a telegram, of which a copy is inclosed, marked No. 1, and received from him the same day a telegram, of which a copy is inclosed, marked No. 2. I have to-day received a telegram from the marshal of the United States, at New York City, of which a copy is inclosed, marked No. 3. If the suggestions contained in the telegram of the marshal are not approved by the Department of State, will you be so kind as to inform this office of the action desired by that Department?

Very respectfully, &c.,

W. A. FIELD,
Acting Attorney-General.

Hon. J. C. B. DAVIS,
Acting Secretary of State.

[Inclosure No. 1.]

Mr. Field, Acting Attorney-General, to Mr. Pierrepont, district attorney.

[Telegram.]

ATTORNEY-GENERAL'S OFFICE,
Washington, August 3, 1869.

Hon. EDWARDS PIERREPONT, *United States Attorney, New York City:*

The Secretary of State informs this office that the Peruvian minister has notified him that a state of war still exists between Peru and Spain; that the Spanish government has ordered the building within the United States of thirty gun-boats equipped for war, fifteen of [757] *which are building in the ship-yards of the Mystic River, Connecticut, ten in Poillon's yards, Brooklyn, New York, four of which last have been launched, and are at Delamater's, receiving engines; and five gun boats are building at Green Point; and that the President desires that you act promptly and prevent the sailing of any of these gun-boats.

W. A. FIELD,
Acting Attorney-General.

[Inclosure No. 2.]

Mr. Pierrepont, district attorney, to Mr. Hoar, Attorney-General.

[Telegram.]

NEW YORK, *August 3, 1869.*

ATTORNEY-GENERAL, *Washington:*

Yours received. The Spanish gun-boats will be stopped this day.

EDWARDS PIERREPONT.

[Inclosure No. 3.]

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

NEW YORK, *August* 4, 1869.

ATTORNEY-GENERAL, *Washington:*

[758] *I do not think it worth while to stop work on the Spanish gun-boats, at least until they are nearly ready to sail. They cannot leave until we are willing, and if released the damages for stopping work would be heavy. Please telegraph if this is not satisfactory.

FRANCIS C. BARLOW,
United States Marshal.

Mr. Davis, Acting Secretary of State, to Mr. Pierrepont, district attorney.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 4, 1869.

Hon. EDWARDS PIERREPONT,
United States District Attorney, New York:

The Acting Secretary of the Navy, at the request of this Department, yesterday ordered the commandant at New York to act under your directions in the matter of the Spanish gun-boats. The Juniata, the Dale, the Dictator, the Frolic, and some armed tugs are ready to co-operate with you.

J. C. B. DAVIS.

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, August 4, 1869.

[759] *SIR: I have the honor to report that Mr. C. H. Delamater, who owns a foundery on the North River, foot of West Thirteenth street, has a contract with the Spanish government for the construction and delivery to them of thirty gun-boats.

Fifteen of these he caused to be built at Mystic, Connecticut, and fifteen at the ship-yards of Poillon and Stack, the former at Brooklyn, and the latter at Green Point, Williamsburgh.

Eight of the New York boats are launched, and are lying at Delamater's foundery. Of these, four have in more or less of their machinery, and four are just as they came from their stocks. Of those at Mystic, four are launched, and the rest on the stocks. They are to be brought to Delamater's for their machinery as fast as launched.

It will be seen that the assistance of the Navy and the vessels of war mentioned in the telegram to the district attorney are not needed.

This morning I sent to Mr. Fish, at Garrison's, a duplicate of the telegram which I sent you, touching allowing work to be continued. He answers, "Do so, if it cannot be construed as a waiver or release."

[760] As we hold them at present by the power of *the Government, and not by virtue of any writ, it is clear to me that our allowing the work to be continued cannot affect us in any way, and therefore I shall allow the work to be continued, (until they are somewhere near completion,) unless otherwise directed, and I shall allow the vessels as launched to be brought from Brooklyn to Delamater's yard.

My idea would be to cause no more damage than possible, consistently with the safety of the vessels.

I desire to submit to your consideration the question whether we shall allow the boats at Mystic to be brought to New York.

Unless otherwise directed, I shall allow them to be brought here when launched and finished, (up to such a point that there might be danger of their escaping under my supervision,) and when finished, or nearly so, the question of their detention can be finally decided.

I shall have to put some men in charge of them as keepers.

Very respectfully,

FRANCIS C. BARLOW,
United States Marshal.

Hon. E. R. HOAR,
Attorney-General, Washington.

Mr. Fish adds to his telegram as a qualification to the permission to continue the work on the gun-boats, "provided it involves no expense to the United States."

[761] *There will be the expense of keepers on the vessels any way, but no greater expense in case work be continued than if it be stopped.

Mr. Davis, Acting Secretary of State, to Mr. Barlow, United States marshal.

DEPARTMENT OF STATE,
Washington, August 4, 1869.

SIR: I inclose a copy of a note received at this Department from the Peruvian minister, acquainting this Government of an intended violation of the neutrality laws by Spain, in the construction and equipment within the territory and jurisdiction of the United States of thirty armed gun-boats for the use of Spain, while a state of war exists between Peru and Spain.

At the request of this Department, Mr. Pierrepont has been instructed by the Acting Attorney-General to take immediate steps for the detention of such of these vessels as are in his district. The Navy Department will co-operate with you in this new effort to prevent a violation of the laws of the United States, and I have only to add that the President desires that the same commendable vigor which you have hitherto displayed in protecting the neutrality of the United States may be shown in the present case.

[762] *I am, sir, &c.,

J. C. B. DAVIS,
Acting Secretary.

FRANCIS C. BARLOW, Esq.,
United States Marshal, New York.

Mr. Fish, Secretary of State, to Mr. Robeson, Secretary of the Navy.

DEPARTMENT OF STATE.
Washington, August 10, 1869.

SIR: The President having decided to transfer the custody of the Spanish gun-boats seized for a violation of the neutrality law to the Navy Department, I have the honor to inform you that these vessels are now in the possession and custody of Francis C. Barlow, esq., the marshal for the southern district of New York.

The contractor is constructing them for the Spanish government. Four of them are at Delamater's yard, at the foot of Thirteenth street, North River, in the harbor of New York; five are at Green Point; six are at Poillon's yards, in Brooklyn, and fifteen in Mystic River, in Connecticut, all in the custody of keepers appointed by the marshal. The original seizure was made under an order from the Attorney-General to the district attorney for the southern district of New York. Both the district
[763] attorney and the marshal have received or*ders to surrender the vessels into the hands of such officers of the Navy as shall be designated by you to receive them.

The President desires you to prevent these vessels from sailing till permission is given to do so.

I have the honor to be, &c.,

HAMILTON FISH.

Hon. GEORGE M. ROBESON,
Secretary of the Navy.

Mr. Fish, Secretary of State, to Mr. Hoar, Attorney-General.

DEPARTMENT OF STATE.
Washington, August 10, 1869.

SIR: I have the honor to inclose copies of letters to the district attorney and marshal for the southern district of New York, dated this day, instructing them to turn over the custody of the Spanish gun-boats to the Navy Department, by order of the President. I will thank you to give similar directions to these officers, whose proceedings were originatedon your order.

I have the honor to be, &c.,

HAMILTON FISH.

Hon. E. R. HOAR,
Attorney-General.

[Inclosure.]

Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney.

764] * DEPARTMENT OF STATE.
Washington, August 10, 1869.

SIR: I have to acquaint you that the President has decided to place the custody of the gun-boats, seized and held by Marshal Barlow, hereafter with the Navy Department. You will, therefore, so far as you

have control over them, deliver the custody of them to such officers of the Navy as shall be authorized to receive them.

I am, sir, &c.,

HAMILTON FISH.

EDWARDS PIERREPONT, Esq.,
United States District Attorney, New York.

[Inclosure.]

Mr. Fish, Secretary of State, to Mr. Barlow, United States marshal.

DEPARTMENT OF STATE,
Washington, August 10, 1869.

SIR: I have to acquaint you that the President has decided to place the custody of the gun-boats, seized and held by you, hereafter with the Navy Department. You will therefore, so far as you have control over them, deliver the custody of them to such officers of the Navy as shall be authorized to receive them.

[765] In regard to the proposed armament for those *vessels, which you understood to be in process of construction at Cold Spring, you will please confer with the proprietors of those works, and on receiving their assurance that no delivery of such armament will be made without sufficient previous notice to you and this Department, you may say to them that you will not, for the present, further interfere with their carrying out their contract.

I am, sir, &c.,

HAMILTON FISH.

FRANCIS C. BARLOW, Esq.,
United States Marshal, Southern District of New York.

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

NEW YORK, *August* 10, 1869.

ATTORNEY-GENERAL, *Washington:*

Will you telegraph the Connecticut marshal to take charge of the Spanish gun-boats at Mystic? He thinks he requires orders from you.

FRANCIS C. BARLOW,
United States Marshal.

Mr. Field, Acting Attorney-General, to Mr. Barlow, United States marshal.

[Telegram.]

WASHINGTON, *August* 11, 1869.

F. C. BARLOW, *United States Marshal, New York City:*

766] *Yesterday's telegram received. You will follow instructions of the State Department sent yesterday, in regard to putting Spanish gun-boats in charge of the Navy Department. The Connecti-

cut marshal, if he have charge of the gun-boats at Mystic, will deliver the custody of them to such officers of the Navy as shall be authorized to receive them. Show this to the district attorney, and communicate with the Connecticut marshal.

W. A. FIELD,
Acting Attorney-General.

Mr. Smith, Acting Secretary of the Navy, to Mr. Fish, Secretary of State.

NAVY DEPARTMENT,
Washington, August 11, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 10th instant, and to inform you that Rear-Admiral S. W. Godon, commandant of the navy-yard, New York, has been authorized to receive the Spanish gun-boats, and be guided by the President's instructions concerning them.

Very respectfully,

M. SMITH,
Acting Secretary of the Navy.

The Hon. HAMILTON FISH,
Secretary of State.

767] **Mr. Davis, Acting Secretary of State, to Mr. Barlow, United States marshal.*

DEPARTMENT OF STATE.
Washington, August 13, 1869.

SIR: I give you herewith, for your information, a transcript of a letter from the Acting Secretary of the Navy, of the 11th instant, relative to the transfer of the Spanish gun-boats which were recently seized by order of the President, to the custody of the commandant of the navy-yard at New York.

I have the honor to be, &c.,

J. C. B. DAVIS,
Acting Secretary.

FRANCIS C. BARLOW, Esq.,
United States Marshal, New York.

Mr. Davis, Acting Secretary of State, to Mr. Hoar, Attorney-General.

DEPARTMENT OF STATE,
Washington, August 13, 1869.

SIR: I give you herewith, for your information, a transcript of a letter from the Acting Secretary of the Navy, of the 11th instant, relative te the transfer of the Spanish gun-boats which were recently

[768] seized by order of the President, to the custody *of the commandant of the navy-yard at New York.

I am, sir, &c.,

J. C. B. DAVIS,
Acting Secretary.

The Hon. E. R. HOAR,
Attorney-General.

[For inclosure see *ante*, p. 739.]

Mr. Fish, Secretary of State, to Mr. Boutwell, Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, September 14, 1869.

SIR: Having this day received information which leads me to think that one of the Spanish gun-boats seized several weeks since at New York, by the President's order, and subsequently committed to the custody of the commandant of the navy-yard there, is in readiness for service and may attempt to depart thence, I have the honor to suggest that such instructions may be issued by your Department as will insure the exercise of proper vigilance on the part of the customs authorities of New York to prevent the issuing of a clearance to such vessel should application for one be made.

I have the honor to be, &c.,

HAMILTON FISH.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney.

DEPARTMENT OF STATE,
[769] *Washington, November* 25, 1869.

SIR: In answer to your letter of the 23d, I sent you this morning a telegram, as follows:

The course you have adopted, as mentioned in your letter of the 23d, is that which was directed by the President. There has been no change, and none is contemplated.

In further reply I have to say, that in the absence of any recognition by this Government of belligerent rights to the insurgents of Cuba, the only ground on which the judicial proceedings against the vessels being built by Mr. Delamater can be conducted or prosecuted by the Government, is that decided by the President, viz, the relation between Spain and Peru. It is not deemed consistent with the character or dignity of the Government to interpose any unnecessary delays to the judicial proceedings, but to take the judgment of the courts on the case as it stands and abide by it.

Should circumstances make necessary any departure from the line of conduct indicated, you will be advised thereof.

I have the honor to be, very respectfully, yours,

HAMILTON FISH.

EDWARDS PIERREPONT,
United States District Attorney, New York.

[770] *Mr. Pierrepont, district attorney, to Mr. Fish, Secretary of State.*

OFFICE OF THE ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK,
No. 41 Chambers street, November 25, 1869.

SIR: Your letter of the 23d instant, inclosing copy of Delamater's protest, and your telegram of this date, are received.

The gun-boats were libeled as I stated, on the 23d instant, they would be, and upon the ground mentioned in that letter. I suppose a motion will soon be made to release them on bond. As a matter of course they will be so released, provided the bonds are satisfactory, unless the Government for some reason, or without reason except its will, desire that they should not be bonded. If the Government oppose their release on bond, I wish to be advised at an early date, as this will be an important question to be determined on a motion. If the Government are willing that they should be released on bond, then my course will be very different from the course which I shall take if the Government do not wish them so released. I think I can get a special admiralty

[771] *term appointed for an early trial of the libels, and thus dispose of the whole question by an early trial without any bonding. I respectfully await the expression of your views in the premises.

Yours, very respectfully,

EDWARDS PIERREPONT,
United States Attorney.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney.

DEPARTMENT OF STATE,
Washington, November 26, 1869.

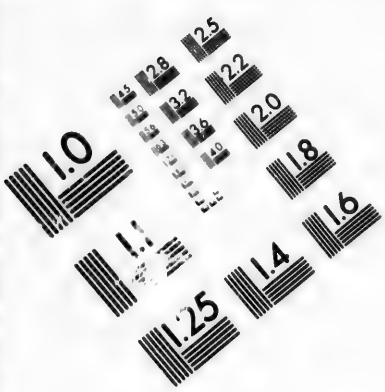
SIR: I have to acknowledge your letter of the 25th instant, in which you acknowledge the receipt of mine of 23d, and of a telegram from me of the 24th instant.

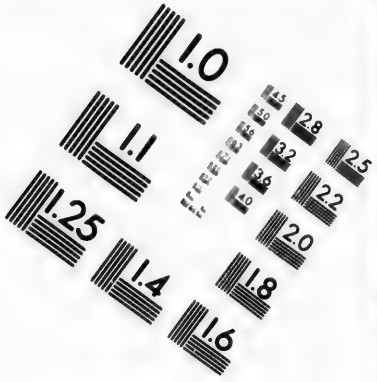
You mention that the gun-boats (building by Mr. Delamater) were libeled on the 23d instant; that you suppose a motion will be soon made to release them on bond; that as a matter of course they will be released, provided the bonds are satisfactory, unless the Government for some reason, or without reason, except its will, desire that they should not be bonded. You wish, if the Government oppose their release on bond, to be advised at an early date, as this will be an important question to be determined on a motion; and you say that if the Government are willing they should be released on bond, then your course

[772] *will be very different from the course which you should take if the Government do not wish them so released.

The interference of the Government with these gun-boats was induced upon the representation that they were designed to operate in violation of the neutrality obligations of this Government. The immediate moving suggestion was a remonstrance from the Peruvian minister accredited here, against their departure, alleging that they were armed vessels of war, belonging to the government of Spain, with which, as he claimed, the republic of Peru was at war.

The Government having become satisfied that the vessels do not belong to Spain, (whatever may be their eventual ownership or destina-





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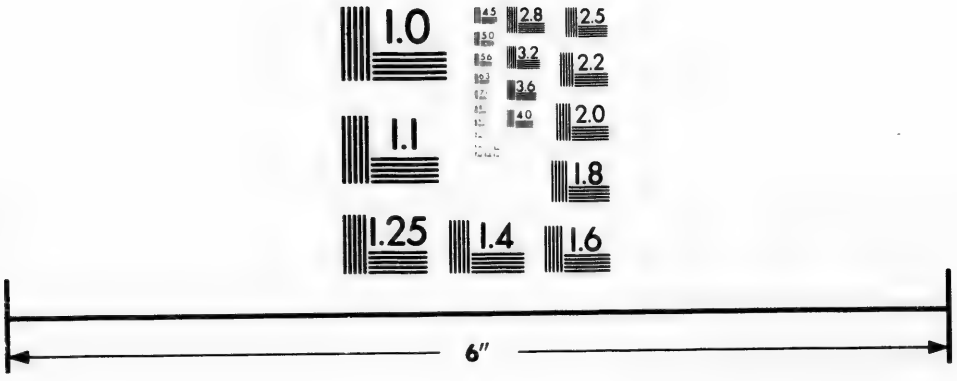

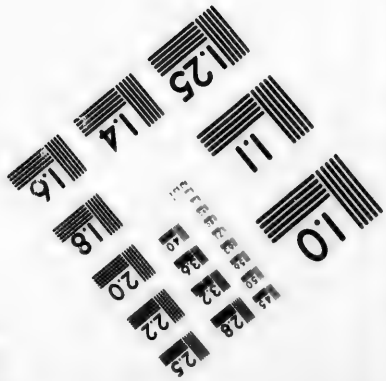

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tion, but that they are the property of an American citizen,) in deference to the claim of the Peruvian government, through its minister, has authorized the proceedings which you have instituted.

The Government does not desire to interfere with the proper discretion of the court in the administration of its duties, and still less with its decisions and judgment.

The President explained to you personally his views and the attitude in which the government stands toward this case, and he knows no reason why, if the court decides that the vessels are entitled to be bonded, Mr. Delamater, their builder and owner, should be deprived of the right which a solemn judgment of a court shall have awarded him. He desires judgment to be given on the merits of the case, without mak-

[773] ing it an exception to the ordinary administration of *the court.

Your suggestion of the appointment of a special admiralty term for an early trial of the libels meets the approval of this Department, if such appointment can be made without interference with public interests or other important business of the court. An early decision of these cases is very desirable.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

Hon. EDWARDS PIERREPONT,
United States Attorney for the Southern District of New York.

Mr. Harlow, United States marshal, to Mr. Fish, Secretary of State.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, November 26, 1869.

SIR: I have the honor to report that on the evening of the 24th instant, by order of the United States district court of the southern district of New York, I seized, and now have in my custody, thirty vessels known as the Spanish gun-boats, now lying at foot of Thirteenth street, North River.

I have five watchmen engaged night and day, and have hired a tug-boat, which is in charge of one of my deputies, with a gun, gunner, and ammunition on board, kindly furnished by Admiral Godon, commanding the navy-yard at Brooklyn.

[774] *I have arranged a code of signals between my boat and the United States gun-boat Frolic, lying in the harbor, in case any attempt should be made to get the Spanish vessels to sea.

The utmost vigilance shall be exercised by myself and deputies to prevent the escape of these gun-boats. In this matter I am incurring an expense of $35 per day.

For perfect security I should prefer that a revenue-cutter or Navy gun-boat should be detailed to be alongside these vessels, in place of the improvised gun-boat which I now have.

Admiral Godon cannot furnish me one without an order from the Department.

Very respectfully, your obedient servant,

S. R. HARLOW,
United States Marshal

Hon. HAMILTON FISH,
Secretary of State.

Mr. Roberts, Spanish minister, to Mr. Fish, Secretary of State.

WASHINGTON, *November* 27, 1869.

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has the honor to inform the honorable Secretary of State that, in the month of May last, the Spanish government, represented by a commission of naval officers, made, with Mr. Cornelius Delamater, a ship-builder and citizen of the United States residing in New York, a contract, whereby the latter agreed to build, for the account of the Spanish government, thirty vessels of a certain class, designed
[775] exclusively *for the coast service, and not for long voyages, which are to be delivered to the chief of said commission at the beginning of the month of December next.

The undersigned deems it his duty to state to the honorable Secretary of State that the building of these vessels was ordered to be done in this republic, in the certainty that there existed no lawful cause which could impede the same, and in view of the numerous antecedents which existed with regard to similar cases of war-vessels purchased in the United States by other foreign nations, and in consideration, moreover, of the traditional friendship which has always existed between both countries, which friendship the recent revolution in Spain ought apparently to have served to draw closer.

All these things were considered when the contract was made by the Spanish representative with the American citizen, Mr. Cornelius Delamater. Thus it is that the undersigned has seen, with the greatest surprise, in the newspapers of the 24th and 25th instant, the documents connected with the judicial order relative to these vessels, signed by Mr. Edwards Pierrepont, district attorney of the southern district of the State of New York.

The first of these documents is an order for the seizure of the thirty gun-boats, founded on the consideration that Spain being at war with Peru, these vessels may eventually be used against the said republic; the second is an order of attachment, or preventive embargo,
[776] citing Mr. De*lamater to appear, on the 14th day of December next, at 11 o'clock in the morning, before the judge of the southern district of the State of New York.

There is consequently no doubt that the continuation of these proceedings may render it impossible for Mr. Delamater duly to fulfill his contract with the Spanish government, and it results, moreover, that the intervention of the Government of the United States would prevent the government which I have the honor to represent from taking due and lawful possession of its property; this intervention would be the *de facto* cause of the annulment of the contract made by Spain with Mr. Delamater, and, in case of the occurrence of this grave event, an event which is rendered still more grave by the consequences which may ensue from it, I allow myself, beforehand, officially to call thereto the attention of the honorable Secretary of State.

What explanation can be given of these proceedings? At whose request have they been initiated? Can they be legally justified by the state of the relations existing between Spain and Peru? The honorable Secretary of State is aware that Spain had already accepted the mediation of the United States for the negotiation of a peace, or the signing of an armistice, long before the republics of the Pacific decided to do the same, and, as to the relations with Peru, Mr. Hamilton Fish knows that she has given her consent to the proposed mediation, the preliminary negotiations now being so far advanced that it is

[777] possible that on the 15th of January next the plenipoten*tiaries of the aforesaid republics may meet the plenipotentiary of the Spanish nation at Washington, in order to discuss the said question, as is proved by the recent note which the honorable Secretary of State addressed to the undersigned on the 23d of October last, which reads as follows:

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of Mr. Lopez Roberts's note of the 18th instant, in answer to the note addressed to him by the undersigned on the 17th of July last, submitting a copy of a proposed instruction to the diplomatic representatives of the United States accredited to the governments of Ecuador, Peru, Bolivia and Chili, suggesting a conference in the city of Washington, on the 15th of January next, between the representatives of those governments and the representative of Spain upon the subject of a formal armistice or definitive peace.

In reply, the undersigned has the honor to inform Mr. Lopez Roberts that his views upon the subject of the suggested conference are in harmony with those of the undersigned, who hopes that he will in due season be able to communicate to Mr. Lopez Roberts the fact of the acceptance by the governments of Ecuador, Peru, Bolivia, and Chili, of the proposition of the conference referred to.

Spain, as is a notorious fact, and as appears from diplomatic documents, has always been disposed to sign a peace ever since hostilities on her part ceased in the Pacific, and she accepted at once, and [778] without hesitating *for an instant, the mediation of her ancient ally the United States, for the settlement of her differences with the aforesaid republics, disregarding the violent but harmless demonstrations which Peru recently thought proper to make in favor of the bandits (or outlaws) of Cuba, following herein the example of the Government of the United States, which attached no importance on a recent occasion to the proceedings of the accredited representative of Peru, who allowed himself, clothed in his official and diplomatic character, to utter, in New York, offensive and highly improper language against a nation friendly to the United States, disregarding the most common rules of the law of nations, and invading the high prerogatives of the sovereignty of the nation, represented in the person of General Grant, President of this republic.

In the year 1868, a case arose similar to the one which is the principal object of this note, and which the undersigned thinks this a fitting occasion to recall to the recollection of the honorable Secretary of State, with which case Peru was connected. The government of the latter republic purchased two vessels of war from that of the United States, and on what ground did Mr. Garcia y Garcia, at that time minister of Peru, ask that they might be authorized to sail from the ports of the American Union? On the 14th day of April, 1868, he addressed a communication to the Hon. Mr. Seward, then Secretary of State of the [779] United States, declaring that hostili*ties between Spain and Peru had ceased on the 2d day of May, 1866; that the result was a genuine peace as far as regards the duties and rights of neutral powers; that it was a *de facto* peace, as had been settled by the United States and other powers under similar circumstances, as in the case of the new Spanish-American republics before their recognition by Spain; that in the present case it had already been so decided by Great Britain; that the state of war had absolutely ceased, and that neither the right nor the duty existed any longer on the part of the American Government to consider Spain and Peru as belligerents, or to subject either of these two governments to any restriction in the ports of the United States.

On the 20th of April, 1868, Mr. Seward replied, asking for further explanations regarding the matter.

Mr. Garcia replied on the 8th of May of the same year, affirming in

the most explicit terms that "there no longer existed a formal state of war between the allied republics (Chili and Peru) and Spain," and giving further explanations as Mr. Seward desired.

On the 20th of June, 1868, Mr. Garcia again broached the subject in an elaborate argument, with quotations from distinguished publicists, and references to historical precedents, and with reiterated and formal declarations that the state of war between Peru and Spain has ceased, and that a state of peace existed as far as regarded all questions relating to the duties of other nations as neutrals.

[780] *And what was the attitude which, in view of these communications, was taken by the then Secretary of State of the United States? Mr. Seward stated to Mr. Facundo Goñi, minister of Spain at Washington, on the 9th of July, 1868, as follows:

In consequence of the proceedings of the House of Representatives which have been referred to, it seems to the President that the occasion has not yet arrived when it will be necessary for him to decide the grave question which has been raised before this Government, between the ministers of Spain and Peru, namely, the question whether the war which was heretofore waged between those nations has been practically brought to an end or not. Frankness, however, obliges the undersigned to say that unless some unforeseen circumstances shall soon occur, the time for acting upon that question would seem to be near at hand.

The undersigned freely admits the difficulties which are likely to attend the decision of the question. It is certain that a condition of war can be raised without an authoritative declaration of war, and, on the other hand, the situation of peace may be restored by the long suspension of hostilities without a treaty of peace being made. History is full of such occurrences. What period of suspension of war is necessary to justify the presumption of the restoration of peace has never yet been settled, and must in every case be determined with reference to collateral facts and circumstances.

[781] The Spanish government subsequently accepted *the doctrines sustained by the Secretary of State in the foregoing lines, as is shown by the note which Mr. Facundo Goñi had the honor to address him on the 24th of November, 1868.

In view, then, of the considerations set forth in this note, and of the facts therein cited, the undersigned flatters himself that no obstacle will be placed by the Government of the United States in the way of the execution of the contract made by the citizen, Mr. Cornelius Delamater, with the representative of the Spanish government, and that Mr. Delamater may be at liberty to deliver the vessels as he may finish them, without any hinderance.

Although the undersigned has no right to interfere in a judicial proceeding instituted by the Government of the United States against an American citizen, it is his duty to state that if these proceedings should result in preventing Mr. Delamater from fulfilling the terms of his contract with the Spanish representative, as from this fact a grave situation would arise, the undersigned, in the name of his government, informs the honorable Secretary of State that he reserves from this day forward, and giving due notice, all his rights and liberty of action.

The undersigned, in fulfilling his duty in calling the attention of Mr. Hamilton Fish to the case of the occurrence of the event indicated in this note which is not to be expected, will rely under all circumstances on the sense of justice and the distinguished impartiality which characterize the honorable Secretary of State.

The undersigned avails himself of this occasion to reiterate to the honorable Secretary of State of the United States the assurance of his highest consideration.

MAURICIO LOPEZ ROBERTS.

The Hon. SECRETARY OF STATE
Of the United States, &c.

[782] *Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.*

DEPARTMENT OF STATE,
Washington, November 30, 1869.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of a note dated 27th of November, which Mr. Roberts, envoy extraordinary and minister plenipotentiary of Spain, did him the honor to send to him on the 29th instant, in which Mr. Roberts informs the undersigned that in May last the Spanish government, represented by a commission of naval officers, made with Mr. Cornelius Delamater, a ship-builder and citizen of the United States, residing in New York, a contract, whereby the latter agreed to build, for the account of the Spanish government, three vessels of a certain class, designed exclusively for the coast service and not for long voyages, which are to be delivered to the chief of said commission at the beginning of the month of December next.

Mr. Roberts proceeds to give certain very good reasons why the building of those vessels was ordered to be done in this country, and why the contract was made between a Spanish representative and an American citizen. He then states that he has seen with the greatest surprise in the newspapers of the 24th and 25th
[783] *instant, certain documents connected with the judicial order relative to these vessels, signed by Mr. Edwards Pierrepont, attorney of the southern district of New York. Mr. Roberts also indicates his impression of the purport or object of what he calls these "orders."

The undersigned regrets that Mr. Roberts should experience "great surprise" at the institution of judicial proceedings, or at the form in which such proceedings are reduced to their practical operation. The undersigned takes leave to assure Mr. Roberts that the peaceful institution of judicial proceedings in this country is not the cause of alarm, whatever of surprise it may excite to those who have in no degree violated the laws of the land or invaded the rights of other persons, or who contemplate no such violation or invasion.

Mr. Roberts remarks that there is no doubt that the continuation of these proceedings may render it impossible for Mr. Delamater duly to fulfill his contract with the Spanish government, and it results, moreover, that the intervention of the Government of the United States would prevent the Government which he has the honor to represent from taking due and lawful possession of its property; his intervention
[784] *would be the *de facto* cause of the annulment of the contract made by Spain with Mr. Delamater.

Mr. Roberts has not now to be informed that Peru has requested the Government of the United States, as a neutral exercising the right imposed by the law of nations, to order the detention of these vessels, and not to allow them to leave the waters of the United States on any pretext whatever, alleging that the republic of Peru is at war with Spain.

The undersigned takes leave respectfully to remind Mr. Roberts that the judicial proceedings now pending against Mr. Delamater's vessels are of precisely the same nature and are conducted by the same official of the Government and before the same tribunal as were the proceedings instituted some time since, at the instigation of the Spanish government, against the steamship Meteor, alleged to have been intended for hostile service in the interest of the allied republics, including Peru, against Spain.

The object in the present instance is the same as in the former, to as-

certain whether any violation is contemplated of the laws which the United States have enacted to prevent and to punish violations of the neutral obligations of this Government. The only difference is,
[785] that then Spain was apprehen*sive of a hostile proceeding against her by Peru, and now Peru alleges a like intent on the part of Spain against her.

Mr Roberts further says that the undersigned is aware that Spain had already accepted the mediation of the United States for the recognition of a peace, meaning a peace with Peru. Mr. Roberts could not have furnished a more complete justification for the judicial proceedings which have been instituted; and if the fact that Mr. Roberts here cites shall prove the turning-point in the decision of the case submitted to the courts, it will establish at once the candor of Mr. Roberts in presenting this important fact, and the necessity for the intervention of the authorities to prevent the departure of a military increase of the naval force of one of the two powers needing the mediation of a third and neutral power to restore peace between it and the power that complains of an intended violation of the neutrality of the government whose offices are invoked, and which is employed as a mediator. The undersigned, therefore, specially notes Mr. Roberts's admission of a condition of relations existing between Spain and Peru which required a restoration of peace.

While these relations continue, it belongs to other powers who are neutral to regulate their conduct toward the parties according to
[786] the existing conditions *of these relations.

Mr. Goñi, a predecessor of Mr. Roberts, in a letter dated July 29, 1868, claimed that the United States combined the character of neutral with that of mediator, and thereupon founded a "double right" to enforce neutrality and prevent the departure of vessels alleged to be destined for service in the Peruvian navy. May not Peru adopt Mr. Goñi's language, and advance the same "double right" to a demand for an entire neutrality?

Under this view presented by the representative of Spain, it becomes the United States to consider whether they are not bound to recognize a condition under which neither party has the right within its territory to be bettered or strengthened—*quo validia fiat.*

Mr. Roberts devotes a considerable part of his note (the undersigned doubts not very accurately, but he has not tested the accuracy of the citation) to the presentation of extracts from certain correspondence of Mr. Garcia y Garcia, a former minister from Peru to this Government. He also cites, not quite accurately, however, an extract from a letter written by Mr. Seward, a predecessor of the undersigned, in July, 1868, which certainly does not recognize a situation of peace then existing between Spain and Peru, but wherein Mr. Seward expressly
[787] declares that the occasion had not arrived *when it was necessary to decide the grave question whether the war between Spain and Peru had been brought to an end or not, and adds that such decision would be made only after having carefully examined all the pertinent facts within its reach, and after having given due consideration to such representations as shall have been made by the several parties interested. Mr. Roberts does not assert or claim that such decision has been made, or even that the representations of the several parties interested, without the consideration of which, the Spanish minister was fully advised, such decision would not be made, have been submitted. Mr. Roberts appears to have overlooked certain statements made by Señor Goñi, subsequent to the date of Mr. Seward's note to which Mr. Roberts refers.

In a note of Señor Goñi in reply to Mr. Seward, the former says, "To say that a state of war does not exist, when, nevertheless, no proposition of peace has been accepted, is an affirmation equally gratuitous and new, which it is not necessary to contest." The undersigned reminds Mr. Roberts that Peru claims that she has never accepted a proposition of peace.

Mr. Goñi further says, "As to the facts alleged, no one of these implies, even remotely, the cessation of war;" also, "that although Spain * * * has suspended active hostilities, she still finds her-
[788] *self in a state of war;" also, "that the state of war and the state of peace between two nations, first of all, and beyond all, are facts which depend upon the will of the parties interested, it belonging to them to decide by common accord what is the state in which they find themselves, and what the character of their respective relations," &c., &c.; "that the determination of the said state of war cannot be brought about except by the declaration of the interested belligerent parties." These are the declarations of Spain, not of Peru nor of the United States.

The undersigned is not apprised of any "common accord," or of any "declaration of the interested belligerent parties," since the date of Mr. Goñi's letter, which has determined the state of war claimed by Mr. Goñi to have existed at that time between Spain and Peru, or to have changed the relations between them. Spain cannot rightly object to the conclusions to which the argument of her distinguished representative inevitably leads.

Under these circumstances the undersigned is constrained to assure Mr. Roberts that the judicial proceedings which have been instituted, in the spirit of entire and equal friendship to the governments of Spain and Peru, will be allowed to proceed. The United States will
[789] *maintain their position of neutrality, and have full confidence in the integrity and the capacity of the tribunal to which the case has been submitted. Should that tribunal decide that Mr. Delamater has entered into a contract in violation of the law of the land, and in derogation of the neutral obligations of the country, the vessels will be detained. Should it decide that the vessels may depart without violation of the laws, or of the obligations of the nation, they will be allowed then to depart. If Mr. Delamater has entered into an illegal contract, although it be with the representative of Spain, an ancient ally and a present friend of the United States, it cannot be executed, however much this government may regret the disappointment of a friendly power.

Whether or not that contract is illegal is the question upon which the court is to decide.

The undersigned offers to Mr. Roberts renewed assurances of his highest consideration.

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS.

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[790] **Mr. Hoar, Attorney-General, to Mr. Pierrepont, district attorney.*

ATTORNEY-GENERAL'S OFFICE,
Washington, November 30, 1869.

SIR: It is no part of the purpose of the President to submit to the courts the question of the recognition of belligerent rights in any foreign country. That is a public question which is to be decided by the politi-

cal department of the Government, and, when so decided, the courts will adopt and follow their decision.

The wishes of the President have been communicated to you by the Secretary of State in respect to the libels against the gun-boats, and it is my wish that, as intimated in your letter, you shall be governed by them until you receive some further instructions.

Very respectfully,

E. R. HOAR,
Attorney-General.

Hon. EDWARDS PIERREPONT,
United States Attorney, Southern District of New York.

Mr. Roberts, Spanish minister, to Mr. Fish, Secretary of State.

WASHINGTON, *December* 1, 1869.

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has the honor to acknowledge the receipt of the note
[791] which the *honorable Secretary of State of the United States was pleased to address him yesterday in reply to his own of the 27th of November.

Although it is not the present object of the undersigned to discuss the points touched upon in the said document, he thinks it nevertheless proper, and absolutely necessary, to say a few words and to give a few explanations, defining the state of the relations now existing between Spain and the republics of Chila, Peru, Bolivia, and Ecuador.

The honorable Secretary of State refers in his note to the declaration made by my predecessor, Mr. Facundo Goñi, in 1868, by which it appears that he endeavored to prove that Spain, at that time, still considered herself as being in a state of war with the four republics aforesaid. While the undersigned respects whatever may have been the opinion of his predecessor in the year 1868, the time which has passed and the important events which have occurred in the polity and internal affairs of Spain since that time must now be borne in mind. The disappearance of a dynasty from the throne, and a revolution, have raised statesmen of enlightened and liberal opinions to the direction of the
[792] destinies of the nation, and these men consider the *situation of Spain, with regard to the republics of the Pacific, not as a passive state of war, but as a complete state of peace, which, in order to become definitive, only needs to be ratified by a diplomatic act.

The undersigned, in proof of his assertion, begs to refer to his note of the 18th of October last, addressed to the honorable Secretary of State, and he thinks it proper, in order that there may remain no kind of doubt upon so important a point, to transcribe the words uttered by General Prim, president of the council of ministers, on addressing the constituent Cortes, setting forth the political programme of the present government of Spain. He said:

The government proposes to cultivate the relations now existing between it and all the other nations of Europe, and of the world; and if these relations should be suspended with any government, that government which, through me, has the honor to address the constituent Cortes, will make every effort, so far as may comport with the dignity of the nation, and laying aside all pride and vanity, for the restoration of those fraternal relations which ought to exist between peoples of the same race. The gentlemen deputies will understand that I allude to the Spanish-American republics.
[793] There were times, and they not *very remote, when the government of Spain claimed at least to exert their influence among them; and as they did so with arrogance, this alone was sufficient to excite the haughty feelings of those men of our race,

causing them to detest their origin, and to curse the very blood circulating in their veins, declaring themselves enemies of everything Spanish. But the government imposes upon itself the gratifying and patriotic task of regaining the esteem, friendship, and affection of those men, who, as I say, are of our race, and speak our own language. The gentlemen deputies will understand how proper it is for Spain to enter at once and forever into frank and kindly relations with those peoples. The task which the government imposes upon itself to this effect is certainly not a difficult one; on the contrary, it will be easy; at least I entertain the belief that when the words of sympathy and friendship which I address them at this moment, in the name of the regent of the kingdom, in the name of the government of the nation, and still more in the name of the constituent Cortes, (for I believe that I faithfully interpret their desires and aspirations,) when these words, I say, having crossed the space which separates
[794] us, shall reach them, *I feel confident that they will be received with applause, with friendship, and even with tenderness. The rest will be done by our representatives, who will be liberal, as many of them have not been hitherto, and these representatives may tell the inhabitants of those republics that their mother country recognizes absolutely their emancipation and their independence; that the mother country loves them as her children, and that we love them as our brothers.

Matters being in this situation, Spain, as the undersigned had the honor to state in his note of Saturday, the 27th ultimo, which doubtless reached the Department of State on the 29th, as Sunday intervened between the two days, contracted, through a naval commission, with a ship-builder, an American citizen of New York, Mr. Cornelius Delamater by name, for the building of thirty vessels for the coast service.

The undersigned would suppose that the republic of Peru had knowledge of the intentions of the Spanish government, and consequently its remonstrance to the Federal Government of the United States, asking for the detention of said vessels, could not be well founded, it never having been intended to send them to the coasts of the Pacific: but, as the undersigned does not now deem it necessary to enter upon these considerations, he ought to state, in the name of his government,
[795] that he is ready to make *to Peru a declaration similar to that which the representative of the latter republic made to Spain, in 1868, in relation to the monitors Oneota and Catawba, and he desires the Honorable Hamilton Fish to be pleased so to state to the representative of Peru in Washington, assuring him that the said vessels, which, on account of their construction, can only be used for the coast service, are not destined to carry on hostilities against his nation, nor any other American republic; and the undersigned further adds that they have not been built to replace other and larger vessels, that the latter may be able to go and attack Peru or any other American republic.

The undersigned, in making these declarations in the name of his government, feels confident that they will be satisfactory to the Government of the United States and to the representative of Peru.

The undersigned avails himself of this occasion to reiterate to the honorable Secretary of State of the United States the assurances of his highest consideration.

MAURICIO LOPEZ ROBERTS.

The Honorable SECRETARY OF STATE
Of the United States.

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, December 4, 1869.

[796] *The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr.

Lopez Roberts, of the 1st instant, in which Mr. Lopez Roberts calls the attention of the undersigned to the friendly sentiments which animate the present cabinet of Madrid toward the American nationalities of Spanish origin, especially as shown in the language used by General Prim in the constituent Cortes, and in which Mr. Lopez Roberts states in the name of his government that he is ready to make to Peru a declaration similar to that which the representative of the latter republic made to Spain in 1868, in relation to the monitors Oneota and Catawba, and requests the undersigned so to state to the minister of Peru at Washington, assuring him that the gun-boats now detained at New York on the representation of the minister of Peru can only be used for the coast service, and are not destined to carry on hostilities against Peru nor any other American republic, and have not been built to replace other and larger vessels, in order that the latter may be able to go and attack Peru or any other American republic.

The undersigned has read with great satisfaction the friendly assurances of General Prim, to which his attention has been called. He has also had the honor to transmit to the representative of
[797] *Peru at Washington the authoritative statement so made by Mr. Lopez Roberts.

The undersigned avails himself of this opportunity to renew the assurances of his distinguished consideration.

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS.

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, December 8, 1869.

The undersigned, Secretary of State of the United States, has the honor to transmit to Mr. Lopez Roberts a copy of a note of the 5th instant, which he has received from Mr. Freyre, the minister of Peru, conveying his assent, on behalf of his government, to the departure of the gun-boats constructed for the Spanish government by Mr. Delamater, of New York; also a copy of the reply thereto by the undersigned.

The undersigned offers to Mr. Lopez Roberts on this occasion renewed assurances of his highest consideration.

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS.

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[798] **Mr. Roberts, Spanish minister, to Mr. Fish, Secretary of State.*

[Translation.]

LEGATION OF SPAIN IN WASHINGTON,
Washington, December 8, 1869.

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has the honor to inform the honorable Secretary of State of the United States that he has received, with his note of to-day, a copy of the one addressed to him by the minister of Peru in this capital, in relation to the gun-boats which are being built for the account of the

Spanish government, in New York, and which were embargoed at the request of the said representative, made in August last, and the one which, likewise, under date of to day, he has addressed to Mr. Freyre, in reply to the note aforesaid.

The undersigned, in accordance with the offer made by him in his note of the 1st instant, to make a declaration similar to the one made by the representative of the republic of Peru to Spain in 1868, in the matter of the monitors Oneota and Catawba, declares, in the name of his government, that the said thirty gun-boats are not designed to carry on hostilities against the republic of Peru, nor to release larger vessels designed for this purpose, and he moreover gives assurance that

[799] they shall at no time commit acts of hostility against the *flag of the said republic.

The undersigned, in transmitting this declaration to the honorable Secretary of State, thanks him, in the name of his government, for his friendly intervention in order to bring about a satisfactory solution of this question, and hereby reiterates the assurances of his highest consideration.

MAURICIO LOPEZ ROBERTS.

The Hon. SECRETARY OF STATE *of the United States.*

Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney.

DEPARTMENT OF STATE,
Washington, December 8, 1869.

SIR: I inclose herewith copies of letters relating to the vessels being built in New York by Mr. Delamater for the Spanish government, (as is said,) which have passed between this Department and Mr. Lopez Roberts, the minister from Spain, and Colonel Freyre, the minister from Peru, as follows:

1st. Copy of letter from the Spanish minister to the Secretary of State, dated December 1, 1869.

2d. Copy of letter from the Secretary of State to the Peruvian minister, dated December 3, 1869.

[800] 3d. Copy of letter from the Peruvian minister to *the Secretary of State, dated December 5, 1869.

4th. Copy of letter from the Spanish minister to the Secretary of State, dated December 8, 1869.

5th. Copy of letter from the Secretary of State to the Peruvian minister, dated December 8, 1869.

The copies of these letters are forwarded to you for your guidance in the proceedings which have been instituted at the request and in behalf of the Peruvian government for the detention of the vessels referred to.

You will observe that the Government of the United States is at length justified, by the assent of both parties, in arriving at the conclusion, and in resolving that the state of war no longer exists between Spain and Peru, to justify any further prosecution of the complaint that has been made against these vessels.

I am, sir, &c.,

HAMILTON FISH.

EDWARDS PIERREPONT, Esq.,
United States District Attorney, New York.

Mr. Pierrepont, district attorney, to Mr. Fish, Secretary of State.

OFFICE OF THE ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK,
41 *Chambers street, December* 10, 1869.

SIR: By order of the court, this day made, the Spanish Cuban gun-boats are released. I have directed the marshal to keep them no longer in custody; he will surrender them forthwith.

Yours, very respectfully,

EDWARDS PIERREPONT,
United States Attorney.

Hon. HAMILTON FISH,
Secretary of State, Washington, D. C.

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[801] *Mr. Hoar, Attorney-General, to Mr. Fish, Secretary of State.*

ATTORNEY-GENERAL'S OFFICE,
December 16, 1869.

SIR: In compliance with your oral request, I send you in writing my opinion upon the question whether it is proper for the United States to cause a libel to be filed under the third section of the statute of April 20, 1818, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," against the gun-boats building in New York for the Spanish government, on the ground that they are procured to be fitted and armed with intent that they shall be employed in the service of Spain, a foreign state, with intent to cruise or commit hostilities against the subjects, citizens, or property of a "colony, district, or people," with whom the United States are at peace, namely, a colony, district, or people claiming to be the republic of Cuba.

The statute of 1818 is sometimes spoken of as the neutrality act, and undoubtedly its principal object is to secure the performance of the duty of the United States under the law of nations as a neutral nation in respect to foreign powers. But it is an act to punish certain offenders against the United States by fines, imprisonment, and forfeitures, and the act itself defines the precise nature of those offenses.

The United States have not recognized the independent national existence of the island of Cuba, or any part thereof, and no [802] sufficient reason has yet been shown to justify such a recognition.

In view of the Government of the United States, as a matter of fact which must govern our conduct as a nation, the island of Cuba is a territory under the government of Spain, and belonging to that nation. If ever the time shall come when it shall seem fitting to the political department of the Government of the United States to recognize Cuba as an independent government, entitled to admission into the family of nations, or, without recognizing its independence, to find that an organized government, capable of carrying on war, and to be held responsible to other nations for the manner in which it carries it on, exists in that island, it will be the duty of that department to declare and act upon those facts. But before such a state of things is found to exist, it is not in my opinion competent for a court to undertake to settle those question. The judicial tribunals must follow and conform to the political action of the Government in regard to the existence of foreign

states and our relations to them, and it would in my opinion be inconsistent with the honor and dignity of the United States to submit to a court and allow to be declared and acted upon in such an indirect manner rights and duties toward a foreign nation which the Government is not prepared distinctly and upon its own responsibility to avow and maintain.

It has been brought to my notice, as to yours by persons who profess to represent the Cuban insurgents, that libels have already been filed in the courts of the United States, under the statute of 1818, to [803] procure the condemnation of vessels, on the ground that *they were being fitted out and armed with intent to be employed in the service of a "colony, district, or people," namely, the colony, district, or people of Cuba, with intent to cruise and commit hostilities against the subjects of Spain, a nation with whom we are at peace, and it is argued that this involves what is claimed to be the converse of the proposition, that as we assert in those libels that Cuba is a "colony, district, or people," capable of committing hostilities against Spain, the law equally applies to an armament procured or fitted out by Spain for the purpose of hostilities against Cuba, and that the executive government, by filing those libels, have virtually recognized the "colony, district, or people" of Cuba as belligerents.

This argument seems to me to involve an erroneous legal notion, and to be based upon the idea that the statute of 1818, being an act to protect and enforce the neutrality laws of the United States, cannot be applied except where there are independant parties to a contest entitled to equal rights; but this I think is an opinion wholly unsound. Undoubtedly the ordinary application of the statute is to cases where the United States intends to maintain its neutrality in wars between two other nations, or where both parties to a contest have been recognized as belligerents, that is, as having a sufficiently organized political existence to enable them to carry on war. But the statute is not confined in its terms nor, as it seems to me, in its scope and proper effect to such cases. Under it many persons who are insurgents or engaged in what would be regarded, under our law, as levying war against the [804] sovereign *power of the nation, however few in number, and occupying however small a territory, might procure the fitting out and arming of vessels with intent to cruise or commit hostilities against a nation with which we are at peace, and with intent that they should be employed in the service of a "colony, district, or people" not waging a recognized war. The statute would apply to the case of an armament prepared in anticipation of an insurrection or revolt in some district or colony which it was intended to excite, and before hostilities existed.

But on the other hand, when a nation with which we are at peace, or the recognized government thereof, undertakes to procure armed vessels for the purpose of enforcing its own recognized authority within its own dominions, although there may be evidence satisfactory to show that they will aid the government in the suppression of insurrection or rebellion in a legal view, this does not involve a design to commit hostilities against anybody. If the illicit distillers of any section of the United States combine together to resist by force the collection of the revenue, and arm themselves for this purpose, with the intent to set at defiance, permanently and by force, the law of the United States, they must be levying war against the Government; but when the Government sends its officers to disperse or arrest the offenders, although it may find it necessary to employ military force in aid of its authority, it certainly

cannot be considered as committing hostilities against the territory over which operations extend.

[805] The question of belligerency between organized commu*nities is a question of fact, and may be one of the gravest facts upon which a nation is called to decide and act. The concession of belligerent rights to a "colony, district, or people" in a state of insurrection or revolution necessarily involves serious restrictions upon the ordinary rights of the people of the country to carry on branches of manufacture and trade which are unrestricted in time of peace. To prevent our mechanics and merchants from building ships of war, and selling them in the markets of the world is an interference with their private rights which can only be justified on the ground of a paramount duty in our international relations, and however much we may sympathize with the efforts of any portion of the people of another country to resist what they consider oppression, or to achieve independence, our duties are necessarily dependent upon the actual progress which they have made in reaching these objects.

This subject, as you are now aware, is one to which long and careful consideration has been applied, and the result which I have thus briefly stated, and which might receive much fuller statement and illustrations, is that upon which the administration have acted. I trust that I have made my view of the law intelligible, and have the honor to be,

E. R. HOAR,
Attorney-General.

Hon. HAMILTON FISH,
Secretary of State.

[806]

*PART II.

COUNTER CASE

AND

DOCUMENTS OF THE UNITED STATES.

[807] *CUBAN CORRESPONDENCE, 1866–1871.

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[1] *[For correspondence relative to the prevention in the ports of the United States of vessels alleged to be fitting out to cruise against the commerce of France in 1864, see vol. 7, Claims of United States against Great Britain, pp. 39–42.]

Mr. Dickinson, district attorney, to Mr. Hunter, Acting Secretary of State.

[Telegram.]

OFFICE UNITED STATES MILITARY TELEGRAPH,
WAR DEPARTMENT,
New York, January 24, 1866

WM. HUNTER, Esq., *Acting Secretary of State:*

SIR: Upon information and evidence furnished by the Spanish consul that the ship Meteor is being fitted out, and is about to sail from this port with intent that she should be employed or cruise in the service of Chili against the commerce of Spain, I have caused her to be libeled and detained. Has the Department of State any suggestions or instructions?

D. S. DICKINSON,
United States District Attorney.

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[2] **Mr. Hunter, Acting Secretary of State, to Mr. Dickinson, district attorney.*

[Telegram.]

WASHINGTON, *January* 25, 1866.

D. S. DICKINSON, *United States Attorney, New York:*

Your telegram of yesterday reached here too late in the evening to be then answered. At present no suggestions or instructions from this Department relative to the case of the Meteor are deemed necessary.

W. HUNTER.

Mr. Dickinson, district attorney, to Mr. Seward, Secretary of State.

OFFICE OF THE DISTRICT ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, February 17, 1866.

SIR: I have the honor to report in the case of Benjamin V. Mackenna, indicted for a breach of the neutrality laws, &c., that on the 14th

instant he appeared in court, and, in the language of his counsel, "waived his diplomatic privilege," and pleaded to the indictment upon the merits. In other words, he withdrew his plea of alleged diplomatic relations, which relations I was prepared to show, by documents so promptly and courteously furnished me from the State Department, had no existence.

[3] Esteban Rogers, the Chilian consul, indicted *for a similar offense, pleaded to the indictment without any suggestion of privilege, although at the time he evidently had not been advised that his exequatur had been revoked by the President. Both cases stand over for trial in March next, and the defendants have given bail for their appearance.

I have the honor to be, sir, yours, &c.,

D. S. DICKINSON,
United States District Attorney.

Hon. WILLIAM H. SEWARD,
Secretary of State.

Mr. Seward, Secretary of State, to Mr. Dickinson, district attorney.

DEPARTMENT OF STATE,
Washington, March 31, 1865.

SIR: Pursuant to the request contained in your letter of yesterday's date, I herewith transmit a certified copy of an official paper on file in this Department relative to the existence of a state of war between Spain and Chili.

I am, sir, yours, &c.,

WILLIAM H. SEWARD.

D. S. DICKINSON, Esq.,
United States District Attorney, New York.

Mr. Seward, Secretary of State, to Mr. McCulloch, Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, April 10, 1866.

SIR: At the instance of Mr. Tassara, the Spanish minister, I [4] will thank you to cause a vessel *called La Orientale, which is at pier No. 33 North River, New York, which is advertised for Montevideo, and which is supposed to be intended for the Chilian service, to be detained for examination. It is advisable that the order for this purpose should be sent by telegraph, as the vessel is to sail to-morrow or the day after.

I have the honor to be, sir, yours, &c.,

WILLIAM H. SEWARD.

Hon. H. MCCULLOCH,
Secretary of the Treasury.

Mr. McCulloch, Secretary of the Treasury, to Mr. Seward, Secretary of State.

TREASURY DEPARTMENT,
Washington, April 11, 1866.

SIR: I have the honor to acknowledge the receipt of your communication of the 10th instant, requesting that the vessel called La Orientale, advertised for Montevideo, be detained at New York for examination. In accordance with such request, the following telegram was forthwith transmitted to the collector at New York:

Detain vessel called La Orientale, which is at pier No. 33 North River, and advertised for Montevideo, and await instructions from this Department.

I will thank you to inform me at the earliest practicable moment what further action, if any, is required from this Department in the matter.

I am yours, &c.,

HUGH McCULLOCH,
Secretary of the Treasury.

Hon. WILLIAM H. SEWARD,
Secretary of State.

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[5] **Mr. Seward, Secretary of State, to Mr. Dickinson, district attorney.*

DEPARTMENT OF STATE,
Washington, April 11, 1866.

SIR: I inclose a translation of a note of yesterday, addressed to this Department by Mr. Tassara, the Spanish minister here, on the subject of a vessel at New York called La Orientale, which, supposing her to be intended for the service of the republic of Chili, he requests may be detained for examination. The request has been made known to the Secretary of the Treasury, who is understood to have complied with it. You will cause the proper examination to be made, and, if it should result in sufficient cause therefor, the vessel, and any parties concerned, may be judicially proceeded against.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

DANIEL S. DICKINSON, Esq.,
Attorney of the United States for the Southern District of New York.

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[6] **Mr. Seward, Secretary of State, to Mr. Tassara, Spanish minister.*

DEPARTMENT OF STATE,
Washington, April 11, 1866.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of Mr. Tassara's note of yesterday's date, relative to the vessel called the La Orientale, and alleged to be of a suspicious character, now lying at the port of New York, and advertised to sail for Montivedeo, but really, according to Mr. Tassara's belief, for service in the cause of the Chilian government.

In reply, the undersigned has the honor to inform Mr. Tassara that his request for the detention of the vessel referred to, until her real destination can be made clear, has been complied with.

The undersigned offers to Mr. Tassara on this occasion renewed assurances of his very high consideration.

WILLIAM H. SEWARD.

Señor Don GABRIEL GARCIA Y TASSARA,
&c., &c., &c.

[7] *Mr. Seward, Secretary of State, to Mr. Welles, Secretary of the Navy.*

DEPARTMENT OF STATE.
Washington, April 16, 1866.

SIR: I have the honor to inclose herewith a copy of a telegraphic dispatch received from the commanding officer at Fort Sullivan, Maine, and to ask your attention to the subject to which it relates. I would suggest that instructions be sent to the Winoski to co-operate with the military and revenue officers and the police, in order to prevent or defeat any attempted violation of the neutrality laws of the United States.

I have the honor to be, &c.,

WILLIAM H. SEWARD.

Hon. GIDEON WELLES,
Secretary of the Navy.

Mr. McCulloch, Secretary of the Treasury, to Mr. Seward, Secretary of State.

TREASURY DEPARTMENT.
Washington, April 20, 1866.

SIR: I have the honor to submit herewith the letter of the collector at Stonington, relative to the gun-boat Sciota, recently purchased from the United States, and now loading with guns, gun-carriages, &c., for Valparaiso. The collector asks what course he shall pursue, a question which is respectfully presented for your consideration.

With great respect,

H. McCULLOCH.
Secretary of the Treasury.

Hon. WILLIAM H. SEWARD,
Secretary of State.

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[8] *[Inclosure.]

Mr. Turnbull, collector, to Mr. McCulloch, Secretary of the Treasury.

OFFICE OF THE COLLECTOR OF CUSTOMS.
DISTRICT OF STONINGTON, CONNECTICUT.
Stonington, April 16, 1866.

SIR: The gun-boat Sciota, recently purchased of the United States Government by parties in New London, has been repairing at Noank, from which place she expects to sail for her destination, Valparaiso. I understand her cargo is to consist of guns, gun-carriages, kerosene oil, oakum, &c. It is the impression here that she is intended for the Chilian navy.

Please inform me if I shall allow her to clear for Valparaiso, or what course I shall pursue in regard to her.

Yours, very respectfully,

H. N. TURNBULL,
Collector.

HUGH MCCULLOCH,
Secretary of the Treasury, Washington, D. C.

Mr. Speed, Attorney-General, to Mr. Kelby, district attorney.

OFFICE OF THE ATTORNEY-GENERAL,
Washington, April 21, 1866.

[9] * SIR: I inclose to you a copy of a letter this day received by me from the Secretary of State.

You will be on the watch, and careful to see that the neutrality law is not violated.

Very respectfully, &c.,

JAMES SPEED,
Attorney-General.

HIRAM KELBY, Esq.,
United States Attorney, New London, Connecticut.

Mr. Seward, Secretary of State, to Mr. McCulloch, Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, April 21, 1866.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, inclosing the copy of a letter from the collector of customs at the port of Stonington, in relation to the apprehended fitting out of the gun-boat Sciota (late of the Navy) in violation of our neutral obligations. The subject has been brought to the attention of the Attorney-General, who has undertaken to give the proper instructions for the investigation of the case by the district attorney of the United States for Connecticut, with a view to such proceedings as may be found necessary. In the mean time I respectfully suggest the expediency of your giving directions for the detention of the vessel until further orders.

Your obedient servant,

WILLIAM H. SEWARD.

Hon. H. MCCULLOCH,
Secretary of the Treasury.

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[10] * *Mr. Goodloe, district attorney, to Mr. Ashton, Acting Attorney-General.*

OFFICE UNITED STATES DISTRICT ATTORNEY,
EASTERN DISTRICT LOUISIANA,
New Orleans, Louisiana, May 5, 1866.

SIR: I have the honor to acknowledge the receipt of your letter of the 2d instant, inclosing a copy of a dispatch addressed to the Secretary of

State of the United States, by the minister of Spain, relative to a case of supposed intended violation of the neutrality laws in this district.

I have addressed a note to the consul, asking him to put me in possession of any facts known to him, touching the alleged or supposed intended violation, and expressing my readiness to take such steps as may be necessary to prevent a violation of the law. I will promptly make inquiry into the matter, and, in obedience to your instructions, take such steps as may seem to me to be necessary and proper.

I am, &c.,

JOHN K. GOODLOE,
United States Attorney.

Hon. J. HUBLEY ASHTON,
Acting Attorney-General.

Mr. Ashton, Acting Attorney-General, to Mr. Seward, Secretary of State.

OFFICE OF THE ATTORNEY-GENERAL,
Washington, May 9, 1866.

[11] *SIR: Your communication of the 2d instant, inclosing a copy of a note of the 20th ultimo, addressed to you by the minister of Spain, relative to a supposed intended violation of the neutrality laws at New Orleans, was duly received at this office.

The inclosure was at once forwarded to the United States attorney at New Orleans, with instructions to institute inquiry as to the truth of the allegations contained in Mr. Tassara's note, and to take such legal measures as might be found necessary and proper in the premises.

Very respectfully, &c.,

J. HUBLEY ASHTON,
Acting Attorney-General.

Hon. WILLIAM H. SEWARD,
Secretary of State.

Mr. Seward, Secretary of State, to Mr. McCulloch, Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, May 9, 1866.

SIR: In a note of this day, Mr. Tassara, the Spanish minister, says that he has information that a vessel named the Panoa, or Pocus, will start from New London to-night or to-morrow as a privateer against Spain. Pursuant to his request, I will consequently thank you

[12] to telegraph to the collector of customs at that place *to detain the vessel for examination, if in his judgment there should be sufficient cause therefor.

I have the honor to be, &c.,

WILLIAM H. SEWARD.

Hon. H. MCCULLOCH,
Secretary of the Treasury.

Mr. Chandler, Assistant Secretary of the Treasury, to Mr. Seward, Secretary of State.

TREASURY DEPARTMENT,
Washington, January 29, 1867.

SIR: I am directed by the Secretary to transmit for your information a copy of a letter from J. R. Savage, of New York, giving information of the alleged fitting out of a privateer at that port, submitted to this Department, with the accompanying copy of a letter from the Secretary of War. A copy of Mr. Savage's letter has this day been transmitted to the collector of the customs at New York, with instructions to him to cause an examination as to the correctness of the charge to be made, and to report to this Department the result of such investigation, with his views.

I have the honor to be, &c.,

WM. E. CHANDLER,
Assistant Secretary.

Hon. WILLIAM H. SEWARD,
Secretary of State.

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[13] **Mr. McCulloch, Secretary of the Treasury to Mr. Seward, Secretary of State.*

TREASURY DEPARTMENT,
Washington, February 2, 1867.

SIR: I have the honor herewith to transmit a copy of a letter from the collector at New York, in reply to a letter from this Department, on the subject of the alleged fitting out of a privateer at the city of New York.

As recommended by you a copy of the correspondence on the subject has been transmitted to the district attorney at New York.

With great respect, I am, sir,

HUGH McCULLOCH,
Secretary of the Treasury.

Hon. WILLIAM H. SEWARD,
Secretary of State.

[Inclosure.]

Mr. Smythe, Collector, to Mr. McCulloch, Secretary of the Treasury.

CUSTOM-HOUSE, NEW YORK,
Collector's Office, January 30, 1867.

SIR: I have the honor to acknowledge receipt of your letter of the 29th instant, inclosing a communication of J. R. Savage, esq., to
[14] the Secretary of War, giving information of an alleged fitting *out of a privateer at New York.

I have the honor to report to the Department that "the eyes of the revenue," by which name one of your honorable predecessors once designated the customs officials of this district, have neither slept nor slumbered over the movements of the alleged privateer in question, but that her proceedings have been known and watched from the beginning;

and every preventive precaution taken to frustrate her designs. As soon as any overt act shall have been committed in her behalf, it will be promptly met by decisive action on my part, and a report of all the facts in the case made to the Department.

I am, very respectfully, &c.,

H. A. SMYTHE,
Collector.

Hon. HUGH MCCULLOCH,
Secretary of the Treasury.

Mr. Courtney, district attorney, to Mr. Seward, Secretary of State.

OFFICE OF THE DISTRICT ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, Feburary 5, 1867.

[15] SIR: *I have the honor to report that I have this day, in compliance with the directions contained in the letter of Collector Smythe, a copy of which is herewith transmitted, caused the steamship R. R. Cuyler to be attached and libelled by due process, issued out of the district court of the United States for the southern district of New York.

This proceeding has been taken for an alleged violation of the neutrality laws of the United States.

I have the honor to be, &c..

SAMUEL G. COURTNEY,
United States Attorney.

Hon. WILLIAM H. SEWARD,
Secretary of State.

[Inclosure.]

Mr. Smythe, Collector, to Mr. Courtney, district attorney.

CUSTOM-HOUSE, NEW YORK,
Collector's Office, February 5, 1867.

SIR: I have to report the seizure, on the 2d instant, of the steamship R. R. Cuyler, and request that proceedings may be instituted for the forfeiture thereof, together with her tackle, apparel, &c., under the third section of the neutrality act of April 20, 1818. I inclose the report of the surveyor of the port who made the seizure and examination as therein related, together with the register, manifest, crew-list, shipping articles, clearance, bill of health, and letter of instructions

[16] *to the master, the papers taken from the rooms of the captain and his assistant, and the affidavits referred to by the surveyor, and four drawings taken from the vessel but not mentioned in the report.

I am, very respectfully, &c.,

H. A. SMYTHE,
Collector.

S. G. COURTNEY, Esq.,
United States Attorney.

[17] *Mr. Herron, United States marshal, to Mr. Browning, Acting Attorney-General.*

OFFICE UNITED STATES MARSHAL,
DISTRICT OF LOUISIANA,
New Orleans, July 13, 1868.

SIR: I have the honor to acknowledge receipt of your communication of the 7th instant, relative to hostile expeditions contemplated against Mexico.

Two expeditions, suspected of being of that character, have been broken up by this office, through the co-operation of the military authorities. One hundred and fourteen men have been arrested June 23 and July 1, and held to answer before a United States commission.

No efforts will be spared to comply with the laws and your instructions.

Respectfully, your obedient servant,

F. J. HERRON,
United States Marshal.

Hon. O. H. BROWNING,
Acting Attorney-General, Washington, D. C.

Mr. Herron, United States marshal, to Mr. Browning, Acting Attorney-General.

OFFICE UNITED STATES MARSHAL,
DISTRICT OF LOUISIANA,
Custom-House Building, New Orleans, July 20, 1868.

SIR: I have the honor to submit the following report of my operations for the purpose of breaking up a movement to violate the neutrality laws of this Government by armed invasion of the Republic of Mexico.

[18] In the early part of June rumors reached me *that parties had arrived in New Orleans, with means and authority from revolutionary chieftains in Mexico, to purchase arms and enlist men, and to transport them to some point on the Mexican coast, supposed to be in the vicinity of Bagdad. On putting myself in communication with the consul of Mexico at New Orleans, Señor Ramon Diaz, I ascertained that similar indefinite reports had come to his knowledge.

Experienced deputy marshals were at once set to tracing up these reports, and the main city rendezvous of the filibuster recruits was in due time discovered to be in rear of a grocery and liquor establishment at the corner of Rampart and Esplanade streets.

Close espionage being maintained upon this place, it was found on the 23d June, ultimo, that the band had completed preparations for its departure, and was about to immediately start from New Orleans. I stationed the few men at my disposal to guard the various places of egress from the Barracks building, and in person made a demand upon the chief of the municipal police for a sufficient force to capture the inmates. Considerable delay was experienced in assembling the policemen, and placing them under my command at the designated spot.

[19] In the mean time the fears of the leaders had become *aroused, and they succeeded in escaping by an outlet not at the time discovered by my men. The remainder, forty in number, were taken into custody, and confined in the military prison.

So far as the most rigorous investigation could develop, the men captured were unacquainted with the real purpose of their leaders. Almost without exception these men were squalid and poverty-stricken, embracing two classes at present very numerous in New Orleans: 1st, persons who, finding it impossible to obtain employment, engage almost unquestioningly in anything which promises immediate support: 2d, desperadoes who will not work so long as there is any enterprise which promises adventure and plunder. Several of these men asserted that they had been engaged to work on a railroad near Vera Cruz.

Señor Diaz was active in his efforts to procure evidence, but when the prisoners were brought before United States Commissioner John P. Wells, esq., on June 25th ultimo, it could not be proven that they had been knowingly guilty of an attempt to violate the laws; so they were discharged.

On June 27th ultimo, I dispatched two deputies, on the United States quartermaster's steamer, Ella Morse, to Grand Isle, situated some
[20] forty miles *from Southwest Pass, and the site of old Fort Livingston. They were supported by one company of the First United States Infantry, under command of Captain and Brevet-Major Kenzie Bates. I had learned that the leaders of this filibuster movement, with excellent discrimination, had selected this as their principal camp and point of embarkation when ships could be procured and time for action arrived.

At Grand Isle, seventy-four men were made prisoners, and thence conveyed to Fort Jackson, from which place they were, after some necessary delay, brought to this city for trial.

Their arraignment before United States Commissioner Wells took place on July 13th instant, when it was found that the same ignorance concerning the ulterior objects of the lawless enterprise in which they were engaged existed among the rank and file as was noticed among the members of the band first captured. The men were, therefore, discharged, but the four officers taken, namely, Hilary Cenas, Emile Ricaud, J. H. Hernandez, and L. R. Hill, were ordered to furnish good and sufficient security for their appearance at the next (fall) term of the United States district court for trial.

The managers and organizers of this filibuster movement dis-
[21] played unusual *secrecy in all they did in this connection, being, up to this moment, I feel convinced, personally and by name unknown to all engaged therein, except the recruiting-officers and such others as it was absolutely necessary to consult. When the first arrests were made, these leaders are supposed to have fled, some to Havana, others to New York, and reports reach me that this latter-named city will henceforward be their base of operations in this country.

In conclusion, it gives me pleasure to state that in all my efforts at suppressing this attempt to rupture the peaceful relations existing between the United States and Mexico I have had the earnest and valuable co-operation of Señor Ramon Diaz, the Mexican consul, also prompt assistance from Brevet Major-General R. C. Buchanan, commanding fifth military district; and aid from the local authorities of New Orleans, when requested.

I have the honor to be, yours, &c.,

F. J. HERRON,
United States Marshal.

Hon. O. H. BROWNING,
Acting Attorney-General of the United States.

Mr. Seward, Secretary of State, to Mr. Evarts, Attorney-General.

DEPARTMENT OF STATE,
Washington, November 11, 1868.

[22] *SIR: I have the honor to inclose, for your consideration, a copy of an article published last evening in a respectable newspaper of the city of New York, referring to the reported organization, at that and other cities, of expeditions for the invasion of Cuba. While this Department has no information of any such illegal organization in progress or contemplated, I nevertheless deem it my duty to bring the subject to your notice, to the end that if you find reason to give any credit to the rumors of projected violations of our laws for the preservation of neutrality, such instructions may be issued to the district attorneys and marshals of the United States required for the defeat of the schemes in question.

I am, sir, yours, &c.,

WILLIAM H. SEWARD.

Hon. WILLIAM M. EVARTS,
Attorney-General.

Mr. Evarts, Attorney-General, to Mr. Courtney, district attorney.

OFFICE OF THE ATTORNEY-GENERAL,
Washington, November 14, 1868.

SIR: I desire to ask your immediate attention to an article in the New York Commercial Advertiser of November 10th instant, relative to rumors of a projected expedition against Cuba, with some [23] supposed object of annexation of that *island* to the United States. Such expeditions are in violation of our neutrality laws, and I beg that you will give the subject immediate attention, and report to me the result of your inquiries during my expected visit to the city of New York.

I am, very respectfully, yours, &c.,

WM. M. EVARTS,
Attorney-General.

S. G. COURTNEY, Esq.,
United States Attorney, New York City.

Mr. Murray, United States marshal, to Mr. Evarts, Attorney-General.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, November 19, 1868.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant, calling my attention to an article in the New York Commercial Advertiser of November 10th instant, relative to rumors of a projected expedition against Cuba, with some supposed object of the annexation of that island to the United States, and directing me to give the subject immediate attention, and report to you the result of my inquiries.

In reply thereto, I have to state that I have made a thorough in
tigation into the above-named projected expedition, and find that it
no existence in fact. It is true that a number of well-kn
[24] filibusters have *opened an office at 498 Broome street, in t
city, for the ostensible purpose of enlisting men for the invasion
the island of Cuba, but really with a view of making money out of
resident Cubans in this city, who sympathize in the cause. But I
happy to inform you that thus far they have been unsuccessful.

I have the honor to remain, &c.,

ROBERT MURRAY,
United States Marshal.

Hon. WM. M. EVARTS,
Attorney-General, Washington, D. C.

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[25] * *Memorandum from Spanish minister, received March* 19, 1869.

From official information, deserving entire credence, it is known tha
at the port of Jacksonville or Fernandina, on the coast of Florida,
steamer is being fitted out by the name of Salvador, (or perhaps som
other name,) for the purpose of committing depredations in the characte
of a privateer, and with the flag of the Cuban insurgents, against th
maritime commerce of Spain. The vessel will leave port with the Unite
States flag, and at sea will replace it by that of said insurgents. Con
sidering that this steamer, under the absurd pretense of sympathizing
with the Cuban insurgents, has no other object that that of committing
acts of piracy against Spanish commerce, it is earnestly hoped that th
United States Government will use all the means it may deem necessary
to avoid a proceeding so scandalous and so contrary to the law of na
tions.

Memorandum from Spanish minister, received March 19, 1869.

According to information received from New Orleans, Mobile, Jack
sonville, Florida, Charleston, Savannah, and other southern ports, fili
bustering expeditions are being organized in said ports, for the purpose
of joining the insurgents in the island of Cuba.

[26] *It is hoped that the Government of the United States will
renew the orders previously issued to the local authorities, (d is
trict attorneys, collectors of customs, United States marshals,) to the
effect that, acting in harmony with the consuls of Spain or other duly
authorized agents, such measures may be taken, agreeably to law, as
shall prevent and defeat such acts of aggression against a nation friendly
to the United States and their ancient ally.

Mr. Fish, Secretary of State, to Mr. Boutwell, Secretary of the Treasury.

DEPARTMENT OF STATE,
March 20, 1869.

SIR: This Department is informed by the minister of Spain that he
has official information to the effect that, at the port of Jacksonville or

Fernandina, in Florida, a steamer is being fitted out by the name of Salvador, (or perhaps some other name,) for the purpose of committing depredations in the character of a privateer, under the flag of the Cuban insurgents, upon the maritime commerce of Spain. It is supposed to be the intention of the steamer to leave port under the United States flag, to be afterward replaced by that of the insurgents referred to. It is, therefore, suggested that such instructions be given to officers
[27] subject to the orders *of your Department as may prevent, or lead to the punishment of, any offense which may be committed against the laws of the United States by the parties who may be engaged in such an illegal enterprise.

I have the honor to be, &c.,

HAMILTON FISH.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

Mr. Fish, Secretary of State, to Mr. Hoar, Attorney-General.

DEPARTMENT OF STATE,
March 20, 1869.

SIR: The Department has received information to the effect that illegal expeditions are in progress at New Orleans, Mobile, Jacksonville, Charleston, Savannah, and other southern ports, for the purpose of aiding the insurgents in the island of Cuba. It is consequently suggested that such instructions be given to the proper officers in that quarter as may prevent or lead to a punishment of any violation of the act of Congress of the 20th of April, 1818.

I have the honor to be, &c.,

HAMILTON FISH.

Hon. E. R. HOAR,
Attorney-General.

Vice-Admiral Porter, for Secretary of the Navy, to Mr. Fish, Secretary of State.

NAVY DEPARTMENT, *March* 22, 1869.

[28] *SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, regarding the report which has reached the Spanish minister, of the fitting out of a steamer at Fernandina or Jacksonville, to cruise, under the flag of the Cuban insurgents, against the commerce of Spain, and to inform you that proper instructions have been given to Rear-Admiral Hoff, commanding the North Atlantic squadron, on the subject.

Very respectfully,

DAVID D. PORTER,
Vice-Admiral, for Secretary of the Navy.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Hoar, Attorney-General, to Mr. Bisbee, district attorney.

ATTORNEY-GENERAL'S OFFICE, *March* 23, 1869.

SIR: This Department has received information that a steamer is being fitted out at the port of Jacksonville or Fernandina, in your district, for the purpose of committing depredations in the character of a privateer, under the flag of the Cuban insurgents, upon the maritime commerce of Spain. It is supposed to be the intention of the steamer to leave the port under the flag of the United States, to be afterward replaced by that of the insurgents referred to.

[29] *You are instructed to communicate this information to the United States marshal, and, with him, take such measures as may prevent such a violation of the laws of the United States, and to report your action to this office.

Very respectfully, yours,

E. R. HOAR,
Attorney-General.

HORATIO BISBEE, Jr., Esq.,
United States Attorney, Saint Augustine, Florida.

Mr. Hoar, Attorney-General, to the district attorneys.

ATTORNEY-GENERAL'S OFFICE, *March* 23, 1869.

To the UNITED STATES ATTORNEYS at Charleston, South Carolina, Savannah, Georgia, northern district of Florida, southern district of Florida, New Orleans, Louisiana, and Mobile, Alabama:

SIR: Information has been received at this office to the effect that illegal expeditions are in progress at New Orleans, Mobile, Jacksonville, Charleston, Savannah, and other southern ports, for the purpose of aiding the insurgents in the island of Cuba.

You are hereby instructed to keep a close watch on any expedition of this character which you may have reason to suppose may be attempted in your district, and, with the aid of the marshal, to take such steps for its prevention or punishment as are warranted by law.

Very respectfully,

E. R. HOAR,
Attorney-General.

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[30] **Mr. Hoar, Attorney General, to Mr. Fish, Secretary of State.*

ATTORNEY-GENERAL'S OFFICE, *March* 23, 1869.

SIR: I have the honor to acknowledge the receipt of your letters of the 20th instant, relative to alleged illegal expeditions now in progress at various southern ports, for the purpose of aiding the insurgents in the island of Cuba, and to the case of a steamer being fitted out at Jacksonville or Fernandina, for the purpose of committing depredations on Spanish commerce, as a privateer, under the flag of the insurgents referred to.

As suggested, such instructions have been issued to the officers of the Government, subject to the orders of this Department, as it is hoped,

may lead to the prevention or punishment of any such violations of the laws of the United States.

Very respectfully, sir, &c.,

E. R. HOAR.
Attorney-General.

Hon. HAMILTON FISH,
Secretary of State.

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[31] **Mr. Fish, Secretary of State, to Mr. Buchanan.*

DEPARTMENT OF STATE,
March 30, 1869.

SIR: I have to acknowledge the receipt of your letter of the 23d instant, addressed to the President, and by him referred to this Department, in relation to the seizure and condemnation of the bark Georgiana by the government of Spain. In reply I have to state that the Georgiana appears to have been condemned by a Spanish admiralty court of the first instance, as a lawful prize of war, in consequence of her having been engaged in transporting a military expedition and its munitions, designed for the invasion of the island of Cuba. If the judgment of that court was erroneous, a remedy should have been sought by the owner of the Georgiana, through appeal to the court of last resort, where it is to be presumed that the error, if any, would have been corrected. If it were admissible now to discuss the propriety of the judgment, this Government is not in possession of such information as would enable it to show the condemnation of the vessel to have been unwarranted. It is not sufficient that the owners, and even the master, were ignorant of the destination and purpose of the criminal expedition

[32] *in which the vessel was employed. "The question," it was said by Judge Betts, delivering the judgment of the district court for the southern district of New York, condemning the schooner Napoleon, "is as to the innocency or guilt of *the vessel*, as if the transaction in which she was implicated was one of personal violation on her part." He further remarks that "the most distinguished and unblemished reputation on the part of a ship-owner will not protect his vessel from confiscation when it is engaged, through untrustworthy agents, and without his knowledge, and against his prohibition, in illicit employments, in infractions of revenue and fiscal laws, and pre-eminently in violating the laws of war."

There is nothing to show that this doctrine, of which this Government has availed itself during the late rebellion, was not legitimately applied to the case of the Georgiana. It is not thought advisable, therefore, to renew any correspondence with the Spanish government in relation to this vessel, which was opened with a view mainly to rescue from the severe penalties of Spanish law the deluded members of the illegal expedition.

I am, sir, your obedient servant,

HAMILTON FISH.

ARCH. BUCHANAN, Esq.,
Camden, Maine.

[33] *Mr. Boutwell, Secretary of the Treasury, to Mr. Fish, Secretary of State.*

TREASURY DEPARTMENT,
Washington, April 5, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th ultimo, stating that you had been advised by the minister of Spain that he had received information of the fitting out of a steamer, supposed to be the Salvador, at the port of Jacksonville or Fernandina, Florida, as a Cuban privateer, which might leave port under the flag of the United States, for the purpose of committing depredations on the maritime commerce of Spain.

In reply I have to inform you that inquiry was made of the collectors of the above ports, who report respectively that no such vessel is fitting out as alleged.

I inclose herewith a copy of the reports in question.

Very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure No. 1.]

Mr. Mondy, collector, to Mr. Boutwell, Secretary of the Treasury.

JACKSONVILLE, FLORIDA,
Custom-House, March 26, 1869.

SIR: I have the honor, in reply to your letter of 22d instant, directing that I examine and report if there be any such vessel fitting
[34] out in *this port, as Salvador or other, with intent of being a Cuban privateer, &c., to inform you that there is no steamer or other vessel in this port fitting or preparing to fit out for any such object. There are no steamers in this port, except our regular river-boats, besides the steam pleasure-yacht Fire-Fly, of New York, belonging to Mr. T. P. James, who is on board with his family.

I am, very respectfully, &c.,

P. MONDY, *Collector.*

Hon. GEO. S. BOUTWELL,
Secretary of the Treasury, Washington, D. C.

[Inclosure No. 2.]

Mr. Roux, collector, to Mr. Boutwell, Secretary of the Treasury.

CUSTOM-HOUSE,
Fernandina, Florida, March 29, 1869.

SIR: Respectfully referring to your letter of the 22d March instant, I have the honor to reply—

That there is no steamer in or near these waters named Salvador, nor any steamer else than small tow-boats employed hereabout.

Should any movement be developed, your instructions relative to the neutrality act of April 20, 1818, will be duly enforced.

I have the honor to be, yours, &c.,

GEO. S. ROUX.

Hon. GEO. S. BOUTWELL,
Secretary of the Treasury, Washington, D. C.

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[35] **Vice-Admiral Porter, for Secretary of the Navy, to Mr. Fish, Secretary of State.*

NAVY DEPARTMENT,
Washington, April 6, 1869.

SIR: I have the honor to inform you that a report having reached this Department that an expedition was fitting out at, or had sailed from, New Orleans, to land in Cuba, instructions were immediately sent by telegraph to Rear-Admiral H. K. Hoff, commanding the North Atlantic squadron, to endeavor to arrest the expedition. He has telegraphed in reply that he would leave Havana the 3d of April for the Mississippi, in execution of the Department's orders.

Very respectfully, &c.,

DAVID D. POR'TER,
For the Secretary of the Navy.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, April 7, 1869.

SIR: In answer to your informal communication concerning the steamer Salvador, I have the honor to transmit herewith a copy of a letter addressed to this Department by the Secretary of the Treasury, on the 5th instant, and of its accompaniments, stating that no vessel of that name, nor any other, is fitting out as is alleged, with hostile intentions toward Spain, either at Jacksonville or Fernandina, Florida.

[36] *Be pleased, sir, to accept on this occasion renewed assurances of my highest consideration.

HAMILTON FISH.

Señor DON M. LOPEZ ROBERTS,
&c., &c., &c.

Vice-Admiral Porter, for Secretary of the Navy, to the President.

NAVY DEPARTMENT,
Washington, April 21, 1869.

SIR: I have the honor to submit herewith, for your information, a copy of a dispatch, dated the 13th instant, received from Rear-Admiral

H. K. Hoff, commanding the North Atlantic squadron, relative to his inquiries concerning reported expeditions fitting out at New Orleans to land in Cuba.

Very respectfully, yours, &c.,

DAVID D. PORTER,
For the Secretary of the Navy.

The PRESIDENT.

[Inclosure No. 1.]

Rear-Admiral Hoff, commanding North Atlantic squadron, to Mr. Borie, Secretary of the Navy.

NORTH ATLANTIC SQUADRON,
UNITED STATES FLAG-SHIP CONTOOCOOK,
Pensacola Bay, April 13, 1869.

SIR: In consequence of the Southwest Pass Bar, at the mouth of the Mississippi River, being partially blocked up by vessels aground, I did not deem it prudent to go up to New Orleans in this vessel;
[37] therefore I dispatched Fleet Captain de Krafft to that *place, for the purpose of obtaining as much information as possible in regard to Cuban expeditions fitting out.

I have the honor to inclose herewith a copy of his report, by which the Department will observe that there seems to be no likelihood of any armed parties leaving that locality at present.

Very respectfully, yours, &c.,

HENRY K. HOFF,
Rear-Admiral, Commanding North Atlantic Squadron.

Hon. A. E. BORIE,
Secretary of the Navy.

[Inclosure No. 2.]

Commodore P. de Krafft to Rear-Admiral Hoff, commanding North Atlantic squadron.

MISSISSIPPI RIVER, *April* 11, 1869.

SIR: In obedience to your order of the 8th instant, directing me to "proceed to the city of New Orleans, to communicate with the authorities, civil and military, for the purpose of obtaining all possible information in regard to the supposed fitting out of Cuban expeditions in that vicinity," I have the honor to report that I arrived in New Orleans on the 9th, and communicated at once with the following officials: Mr. Gray, collector of the port of New Orleans; Mr. Keith, surveyor of the port of New Orleans; Judge Durrell, judge United States district
[38] court; General Mower, military commandant department; *Señor Charles Pié, consul d'Espagne.

Upon diligent inquiry, it appears that the four first-named gentlemen neither know nor have they any grounds for believing that such expeditions are proposed in the vicinity of New Orleans. Mr. Gray, collector, has specific instructions from Washington on this subject, and has recently exercised great vigilance to arrest all infractions of the neutrality laws.

Señor Charles Pié, the Spanish consul, has no information of a reliable character, but states that some weeks since there were movements on foot believed to have in view the formation of an expedition against Cuba, but that it failed for want of means; that some negotiations had been commenced for the purchase of a steamer, but that they had failed, as money could not be raised to complete the purchase, and the steamer had found other employment. At this time he has no other or more definite information than flying rumors, which cannot be traced to any authentic source.

From the conversation held with these gentlemen, for the purpose of gaining information on this subject, I am unable to discover that there is even a probability of any such expedition being seriously con-
[39] templated, although its *organization has doubtless been discussed, and perhaps proposed.

I am, very respectfully, yours, &c.,

J. C. P. DE KRAFFT,
Commander United States Navy,
Fleet-Captain North Atlantic Squadron.

Rear-Admiral H. K. HOFF,
Commanding North Atlantic Squadron,
United States Flag-Ship Contoocook.

Mr. Fish, Secretary of State, to Mr. Barlow, United States marshal, New York.

[Telegram.]

DEPARTMENT OF STATE,
Washington, May 7, 1869.

FRANCIS C. BARLOW, *United States Marshal, New York:*

The Spanish minister says he has information that the Quaker City is being fitted out and armed to cruise against Spanish commerce. Inquire into the matter with a view to further proceedings.

HAMILTON FISH.

Mr. Barlow, United States marshal, to Mr. Fish, Secretary of State.

[Telegram.]

NEW YORK, *May 7, 1869.*

Hon. HAMILTON FISH, *Secretary of State:*

Telegram just received. I will at once inquire.

FRANCIS C. BARLOW,
United States Marshal.

Mr. Fish, Secretary of State, to Mr. Hoar, Attorney-General.

DEPARTMENT OF STATE.
Washington, May 8, 1869.

[40] *SIR: Mr. Roberts, the minister of Spain, late in the business hours, yesterday, orally represented to this Department that he had

information to the effect that the steamer Quaker City was being fitted out and armed at New York for the purpose of cruising against Spanish commerce under a letter of marque. I at once telegraphed to General Barlow, the marshal, to inquire into the matter, with a view to further proceedings. It is, however, suggested that you give him such further official instructions as you may deem advisable.

I have the honor to be, yours, &c.,

HAMILTON FISH.

E. R. HOAR,
Attorney-General.

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[41] **Mr. Fish, Secretary of State, to Mr. Boutwell, Secretary of the Treasury.*

DEPARTMENT OF STATE,
Washington, May 8, 1869.

SIR: Mr. Roberts, the minister of Spain here, has represented to this Department that the steamer Quaker City is in preparation at New York to cruise against Spanish commerce under a letter of marque. I will consequently thank you to give such instructions as may prevent that vessel from clearing in violation of the neutrality act of 1818.

I have the honor to be, &c.,

HAMILTON FISH.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

Mr. Barlow, United States Marshal, to Mr. Fish, Secretary of State.

[Telegram.]

NEW YORK, *May 8, 1869.*

Secretary of State:

I have been aboard Quaker City. Alterations in her are not suspicious, except clearing cabins from main-deck, which possibly means an armament, otherwise nothing hostile in her appearance. Last Monday, Sneeden, builder, requested Novelty Works to make carriages for
[42] eight heavy guns, which he stated were for Quaker City. *Novelty Works refused, and I cannot learn where the carriages are being made.

Accounts from captain as to ownership and destination are suspicious.

They say she is going to Rio in trade, but their story does not stand criticism.

I believe that if vessel sails without interruption it will be on Cuban expedition or as privateer.

Should we seize now they will deny all, and I doubt if we have enough proof.

Letter by mail. Shall I communicate and act freely with the Spanish consul?

Sunday. Address 258 Fourth avenue.

FRANCIS BARLOW,
United States Marshal.

Mr. Fish, Secretary of State, to Mr. Barlow, United States marshal, New York.

[Telegram.]

DEPARTMENT OF STATE,
Washington, May 8, 1869.

General FRANCIS C. BARLOW, *United States Marshal, New York:*

Dispatch received. Spanish minister been requested to communicate with you. Confer with him or Spanish consul. Watch the ship, and seize whenever sufficient proof.

HAMILTON FISH.

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[43] **Mr. Barlow, United States marshal, to Mr. Fish, Secretary of State.*

UNITED STATES MARSHAL'S OFFICE,
New York, May 9, 1869.

SIR: I have the honor to state that your telegram directing me to watch the Quaker City and seize her when I have sufficient proof was received at 7.30 p. m. of May 8, and at once acknowledged.

What is considered "sufficient proof," and whether it is that degree of proof which would authorize the condemnation of the vessel, is not stated, but unless otherwise directed I shall proceed as follows:

Should the vessel atempt to clear we will withhold a clearance, even though nothing additionally suspicious is learned about her, until we can communicate with Washington and are affirmatively satisfied that her objects are legal. I am told that some small-arms were carried on board on Friday. Should she attempt to go to sea without a clearance, (which is not at all likely,) I shall seize at once. We have the vessel watched and the revenue-cutter near at hand.

[44] Mr. Grinnell is exceedingly vigilant and interested, *and will give the Spanish authorities every assistance and information.

The vessel to-day bears the British flag, and I understand that she was yesterday transferred to British ownership—probably to the captain whom I saw.

They told Mr. Grinnell's man that she was going to Saint Thomas instead of Rio.

Very respectfully,

FRANCIS C. BARLOW,
United States Marshal.

Hon. HAMILTON FISH,
Secretary of State, Washington.

Mr. Hoar, Attorney-General, to Mr. Barlow, United States marshal.

WASHINGTON, *May* 10, 1869.

SIR: Your letter of the 6th instant and your letter of the 8th instant, both addressed to the Secretary of State, relating to the neutrality laws of the United States, and your duties as marshal in reference thereto, have been sent to this office.

The first seven sections of chap. 88 of the acts of Congress of 1818, (3 Stat. at Large, 447,) provide for the punishment of persons and the

forfeiture of property, which are of course to be effected by the judgment of a court in a suit commenced by indictment or libel of information.

[45] Such suits will, in proper cases, be instituted by *the district attorney, and you, as marshal, will arrest the person or property pursuant to the warrant addressed to you from the court.

Sections 8 and 9 of this act empower the President, or such other person as he shall have empowered for that purpose, to employ the land or naval forces, or the militia, for certain purposes named in these sections. Sections 11 and 12 impose in the cases therein on owners or consignees of vessels, certain duties, and give an authority to collectors of customs to detain vessels or to take a bond. Whether suits, either criminal or for forfeiture, are to be instituted, must, so far as the local officers are concerned, be determined by the district attorney, upon such evidence as may be known to him; and you have the well-known right of marshals to call upon the *posse comitatus* to aid you, if you are obstructed in the service of process. So far as sections 8 and 9 confer a larger power than this upon the person empowered by the President pursuant to these sections, such persons must be specially empowered for that purpose, and you do not have this power by virtue of your office as marshal.

It is plain that to efficiently prevent any violations of this act, or to surely punish them, if committed, the cordial and active co-operation of the district attorney, marshal, and collector of the port is

[46] *requisite. Any information that you may obtain in any manner which you deem worthy of any notice, should be immediately communicated by you to the district attorney, and also, if relating to a vessel, to the collector of the port. It is not deemed best, at present, to authorize or require you to employ detectives for the special purpose of discovering violations of the provisions of this act, but you and your deputies are expected to receive all information that may be offered, and to be attentive to all matters of suspicion that come within your knowledge, and in cases where your action is required, to be vigilant, prompt, and efficient. I will thank you to communicate to me, from time to time, any information that you deem trustworthy and important. The local officers are in no event to wait for instructions before acting in cases where they are convinced that a violation of this act has been committed, and where delay may prevent its punishment, but are to act at once upon their best judgment, and immediately to report such action to this office.

Communications from you, unless called for by other departments, or unless the subject-matter pertains particularly to such department, should be made to this office.

Very respectfully,

E. R. HOAR,
Attorney-General.

FRANCIS C. BARLOW, Esq.

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[47] **Mr. Boutwell, Secretary of the Treasury, to Mr. Fish, Secretary of State.*

TREASURY DEPARTMENT,
Washington, May 10, 1869.

SIR: I have the honor to acknowledge your letter of the 8th instant, respecting the steamer Quaker City, and to advise you that, pursuant

to your request, the collector of customs was on that day instructed to prevent the sailing of that vessel in violation of the neutrality act.

Very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Hoar, Attorney-General, to Mr. Pierrepont, district attorney.

[Telegram.]

WASHINGTON, *May* 11, 1869.

EDWARDS PIERREPONT, Esq., *New York:*

Look out for the Quaker City, and on complaint, with proof of probable cause, libel and detain her.

E. R. HOAR,
Attorney-General.

Mr. Barlow, United States marshal, to Mr. Fish, Secretary of State.

UNITED STATES MARSHAL'S OFFICE,
[48] *SOUTHERN DISTRICT OF NEW YORK,
New York, May 11, 1869.

SIR: My instructions in your telegram of May 8 instant, were "to watch the Quaker City, and seize her whenever I obtained sufficient proof."

Under these instructions I should not have seized her (subject to due precautions to prevent her escape) until I had obtained some further evidence of her illegal character.

To-day, however, Mr. Grinnell, acting under instructions from the Secretary of the Treasury, put the revenue-cutter alongside of the Quaker City.

This will, of course, prevent the latter from going to sea without the permission of the customs authorities, but will prevent our obtaining further information, I suppose, by putting her owners on their guard.

Very respectfully,

FRANCIS C. BARLOW,
United States Marshal.

Hon. HAMILTON FISH.
Secretary of State.

Mr. Boutwell, Secretary of the Treasury, to Mr. Fish, Secretary of State.

TREASURY DEPARTMENT,
Washington, May 11, 1869.

[49] SIR: I have the honor herewith to trans*mit a copy of a letter received from the collector of customs at New York, in reply to

my communication of the 8th instant, informing him of the alleged intended fitting out of the steamer Quaker City at that port to cruise against Spanish shipping under a letter of marque, communicated to me in your letter of the 8th instant.

Very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure.]

Mr. Grinnell, collector, to Mr. Boutwell, Secretary of the Treasury.

CUSTOM-HOUSE, NEW YORK,
Collector's Office, May 10, 1869.

SIR: In reply to your letter of May 8 instant, with reference to the fitting out of the steamer Quaker City from this port to cruise against Spanish commerce under a letter of marque, I have the honor to say that, previous to the receipt of this communication, I had been advised of the suspicious movements in and about this vessel, and had ordered the captain of the revenue-cutter McCulloch to hold his vessel in readiness for any emergency which might arise in this connection.

Subsequently, the testimony against the vessel growing stronger,
[50] I ordered the cutter into the *East River, within sight of the suspected vessel, at the same time placing her under the espionage of intelligent officers on shore, detailed to watch and report her movements.

I would further add that I have conferred with the United States marshal, General F. C. Barlow, who is prepared to act with me should any emergency arise requiring his co-operation.

Be assured that I shall continue to exercise the utmost vigilance in this and kindred cases, and promptly advise the Department of whatever steps I may feel constrained to take to vindicate the present attitude of the Government under the neutrality act of April 20, 1818.

Very respectfully,

M. H. GRINNELL,
Collector.

Hon. GEO. S. BOUTWELL,
Secretary of the Treasury.

Mr. Boutwell, Secretary of the Treasury, to Mr. Fish, Secretary State.

TREASURY DEPARTMENT,
Washington, May 12, 1872.

SIR: In addition to the information which I had the honor to submit on yesterday's date relative to the steamer Quaker City at New York, I herewith inclose copy of a letter from the collector of customs at that port, dated the 11th instant.

[51] *Very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure.]

Mr. Grinnell, collector, to Mr. Boutwell, Secretary of the Treasury.

CUSTOM-HOUSE, NEW YORK,
May 11, 1869.

SIR: Since my letter of yesterday with reference to the steamship Quaker City, I have the honor further to report that I have been informed that a change in the ownership was made on the 5th day of May, last, for the sum of $125,000, and that on May 8, one Mr. Albon M. Jefferson, claiming to be a British subject, went before the British consul and took the oath of ownership of the said steamer, under the new name of Columbia.

I would further add that the vessel is closely watched, and that there is no possibility of her making any movement of which I shall not be promptly advised.

The air is thick with rumors of the secret preparation of other vessels for similar enterprises, of which I shall promptly inform you should the circumstances warrant an active interference.

Very respectfully, &c.,

M. H. GRINNELL,
Collector.

Hon. G. S. BOUTWELL,
Secretary of the Treasury.

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[52] **Mr. Pierrepont, district attorney, to Mr. Hoar, Attorney General.*

OFFICE OF THE ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK,
41 *Chambers street, May* 12, 1869.

SIR: Your letter of yesterday and telegram of to-day, relating to the Quaker City, are received. I had already taken means to get evidence upon that subject. I have also seen the collector. I believe the steamer is intended for an unlawful expedition, but as yet no one is willing to make any affidavit sufficient to warrant me instituting judicial proceedings. After full interview with the collector, he has agreed to keep the cutter in such position that the Quaker City cannot possibly escape. Within a few days I believe that I shall be in possession of evidence sufficient to libel the steamer. I think I can assure you that she will not escape on any unlawful errand.

Very respectfully, yours,

EDWARDS PIERREONT,
United States Attorney.

Hon. E. R. HOAR,
Attorney-General.

Mr. Fish, Secretary of State, to Mr. Hoar, Attorney-General.

DEPARTMENT OF STATE,
Washington, May 13, 1869.

[53] SIR: Mr. Roberts, the minister from Spain, has orally *and in-

formally represented to this Department that the steamer Atlanta, at Philadelphia, has been sold to Cubans, and the steamers Memphis and Santiago de Cuba, at New York, and the steamer Florida, at Chester, Pennsylvania, are being fitted out under suspicious circumstances. The last-named vessel, as you are aware, is the one respecting which the diplomatic representative of Hayti has also expressed apprehensions.

The expediency of your instructing the judicial officers in regard to them is submitted to your consideration.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

Hon. E. R. HOAR,
Attorney-General.

Mr. Davis, Assistant Secretary of State, to Mr. Barlow, United States marshal.

DEPARTMENT OF STATE,
Washington, May 14, 1869.

SIR: Your letter of the 8th instant, stating your proceedings and views in regard to the vessel Quaker City, and to possible expeditions against the island of Cuba, was received on the 10th instant.

I am, sir, your obedient servant,

J. C. B. DAVIS,
Assistant Secretary.

FRANCIS C. BARLOW, Esq.,
U. S. Marshal for the Southern District of New York, N. Y.

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[54] **Mr. Hoar, Attorney-General, to Mr. Pierrepont, district attorney.*

WASHINGTON, *May* 14, 1869.

SIR: It has been orally represented to the Department of State, by the minister of Spain, that the steamers Memphis and Santiago de Cuba, at New York City, are being fitted out under suspicious circumstances. In regard to these steamers you will obey the instructions relating to the steamer Quaker City heretofore sent you by this office.

Very respectfully,

E. R. HOAR,
Attorney-General.

EDWARDS PIERREPONT,
United States Attorney.

[Duplicate of the above sent to Francis C. Barlow, esq., United States marshal, New York.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Fish, Secretary of State.

TREASURY DEPARTMENT,
Washington, May 14, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th instant, informing me that Mr. Roberts, the minister of Spain,

had represented to your Department that the steamer Atlanta, at Philadelphia, had been sold to Cubans, and that the steamers Memphis and Santiago de Cuba, at New York, and the steamer Florida, at Chester, Pennsylvania, were being fitted out under suspicious circumstances.

The suggestion contained in your letter in regard to the expedi-
[55] ency of this Department issuing instruc*tions to collectors of customs relative to the information communicated has been promptly acted upon, and such instructions have been this day issued to the collectors of the ports above mentioned, a copy of which is herewith transmitted.

I am, very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Grinnell, collector.

TREASURY DEPARTMENT,
Washington, May 14, 1869.

SIR: I transmit herewith a copy of a letter under date of the 13th instant, from the Secretary of State, relative to representations made to him by the Spanish minister, in regard to the alleged fitting out of certain steamers at your port under suspicious circumstances. You will please exercise special vigilance to prevent the sailing of any vessel from your port in violation of law, and keep the Department fully advised respecting the matter.

I am, very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

M. H. GRINNELL, Esq.,
Collector of Customs.

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[56] [Inclosure.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Moore, Collector.

TREASURY DEPARTMENT,
Washington, May 14, 1869.

SIR: I transmit herewith a copy of a letter, under date of the 13th instant, from the Secretary of State, relative to representations made to him by the Spanish minister in regard to the alleged fitting out of certain steamers, under suspicious circumstances, at the ports of Philadelphia and Chester, in your district. You will please exercise special vigilance to prevent the sailing of any vessel from your port in violation of the neutrality act of April 20, 1818, and keep the Department fully advised respecting the matter.

I am, very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

H. D. MOORE, Esq.,
Collector of Customs, Philadelphia.

Mr. Boutwell, Secretary of the Treasury, to Mr. Fish, Secretary of State.

TREASURY DEPARTMENT,
Washington, May 18, 1869.

SIR: Respectfully referring to your communication of the 13th instant, and my reply thereto of the 14th, I have the honor to transmit herewith a copy of a letter from the collector of customs at New York, dated the 15th instant, stating that he had refused a clearance to the steamer Columbia, (Quaker City,) because of suspicious circumstances connected with her.

[57] *I am, very respectfully,

GEO. S. BOUTWELL,
Secretary of the Treasury.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure.]

Mr. Grinnell, collector, to Mr. Boutwell, Secretary of the Treasury.

CUSTOM-HOUSE, NEW YORK,
Collector's Office, May 15, 1869.

SIR: I have to acknowledge the receipt of your letter of the 14th instant, transmitting a copy of one from the honorable Secretary of State, in regard to the alleged fitting out of several steamers at this port, and beg leave to report that the special vigilance of the officers of customs in this district has already been directed to the vessels named, and I have this day refused to grant a clearance to the steamer Columbia, (Quaker City,) the suspicious circumstances connected with her having induced me to adopt that course.

Anticipating your approval of my action in the matter, I am, very respectfully, &c.,

M. H. GRINNELL,
Collector.

Hon. GEO. S. BOUTWELL,
Secretary of the Treasury.

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[58] **Mr. Hoar, Attorney-General, to Mr. Fish, Secretary of State.*

ATTORNEY-GENERAL'S OFFICE,
Washington, D. C., May 18, 1869.

SIR: I have the honor to send inclosed herewith a copy of a letter this day received by me from the United States attorney for the southern district of New York, relating to the steamers Memphis and Santiago de Cuba.

The several district attorneys are instructed that, whenever sufficient evidence is made known to them to establish before a court of justice probable cause to believe that any vessel is forfeitable for a violation of the neutrality laws, they are to file a libel and arrest the vessel.

The expediency of your informing the minister of Spain that the United States attorneys of the several districts will receive directly from the Spanish consuls any facts they may be pleased to communicate respecting any violation of the neutrality laws of the United States, is submitted to your consideration.

I have the honor to be, &c.,

E. R. HOAR,
Attorney-General.

Hon. HAMILTON FISH,
Secretary of State.

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[59] *[Inclosure.]

Mr. Pierrepont, district attorney, to Mr. Hoar, Attorney-General.

OFFICE OF THE ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK,
No. 41 Chambers street, May 17, 1869.

DEAR SIR: Yours of the 14th instant, relating to the Memphis and Santiago, came duly, and received prompt attention. There is no evidence as yet on which to detain them.

I would suggest that, if the Spanish minister would instruct the Spanish consul here to take some pains and collect some *evidence* relating to these matters, and bring it to my notice, I shall act with the greatest promptness. Up to this date I have never seen or heard from the Spanish consul.

Very respectfully, yours,

EDWARDS PIERREPONT,
United States Attorney.

Hon. E. R. HOAR,
Attorney-General.

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, May 20, 1869.

SIR: In a letter to this Department of the 18th instant, with
[60] particular reference to the cases of *the steamers Memphis and Santiago de Cuba, the Attorney-General recommends that you, or any other person in your behalf, communicate, to the attorney of the United States for the proper district, proof of a violation of the law. If such proof be so furnished, judicial proceedings will at once be set on foot for the purpose of preventing or punishing such violation.

I am, sir, with, &c.,

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS, &c., &c.

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, May 21, 1869.

SIR: I have the honor to inclose for your information a transcript of

a letter of the 18th instant, addressed to this Department by the Secretary of the Treasury, transmitting a copy of a communication addressed to him by the collector of customs at New York stating that a clearance had been refused to the steamer Columbia [Quaker City] "because of suspicious circumstances connected with her."

I am, sir, with, &c.,

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS, *&c.*, *&c.*

[61] **Mr. Fish, Secretary of State, to Mr. Boutwell, Secretary of Treasury.*

DEPARTMENT OF STATE,
Washington, May 21, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th instant, with its accompaniment, in relation to the refusal of a clearance to the steamer Columbia [Quaker City,] and to inform you that I have transmitted a copy of the same to Mr. Roberts, the Spanish minister, for his information.

I have the honor to be, &c.,

HAMILTON FISH.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

Mr. Boutwell, Secretary of the Treasury, to Mr. Grinnell, collector.

[Telegram.]

WASHINGTON, *May* 21, 1869.

MOSES H. GRINNELL, *Collector of Customs, New York:*

If the Columbia has not cleared, withhold papers till further orders.

GEORGE S. BOUTWELL,
Secretary of the Treasury.

[62] **Mr. Fish, Secretary of State, to Mr. Boutwell, Secretary of the Treasury.*

DEPARTMENT OF STATE,
Washington, May 25, 1869.

SIR: Mr. Thornton, the British minister accredited to this Government, having represented to me that the steamer Quaker City is laden with flour, that she has been transferred to a British subject and is bound for Jamaica, I submit to you the propriety of instructing the collector of customs at New York to interpose no obstacles to her departure, upon bonds being given that she will not engage in any proceedings which will give aid or support to any parties prosecuting hostile movements against any government with which that of the United States is at peace.

I have the honor to be, sir, yours, &c.,

HAMILTON FISH.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

Mr. Hoar, Attorney-General, to Mr. Pierrepont, district attorney.

WASHINGTON, *June* 17, 1869.

SIR: The Spanish minister writes to the State Department that an armed expedition for Cuba is fitting out in New York, to sail in a day or two. You will please to use all efforts to prevent it, and instruct the marshal to do the same.

Respectfully, yours, &c.,

E. R. HOAR,
Attorney-General.

Hon. E. PIERREPONT,
United States Attorney, New York.

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[63] **Mr. Pierrepont, district attorney, to Mr. Hoar, Attorney-General.*

[Telegram.]

NEW YORK, *June* 18, 1869.

SIR: Yours of the seventeenth in relation to the Cuban expedition is received. Action had already been taken by me.

EDWARDS PIERREPONT,
United States Attorney.

Hon. E. R. HOAR,
Attorney-General, Washington.

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, June 18, 1869.

SIR: I have the honor to acknowledge the receipt of your note of yesterday, relative to the alleged fitting out, in the city of New York, of a military expedition for the purpose of joining the insurgents in Cuba, and to inform you, in reply, that immediately upon its receipt a copy thereof was brought to the attention of the Attorney-General, who, it is not doubted, has taken the necessary precautions to prevent the departure of the expedition referred to, should the statements contained in your note be found to be correct.

I am, sir, with the highest consideration, your obedient servant,

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS, &c., &c.

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[64] **Mr. Fish, Secretary of State, to Mr. Hoar, Attorney-General.*

DEPARTMENT OF STATE,
Washington, June 19, 1869.

SIR: I lose no time in laying before you the original of a note of yesterday, addressed to this Department by Mr. Roberts, the minister from

Spain, relative to alleged illegal proceedings at New York with reference to Cuba. Your prompt attention to the matter is earnestly requested.

I have understood from Mr. Roberts that he can furnish witnesses of the acts which he complains. I will thank you to return his note.

I have the honor to be, sir, yours, &c.,

HAMILTON FISH.

Hon. E. R. HOAR,
Attorney-General.

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, June 19, 1869.

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, relative to alleged illegal proceedings at New York with reference to Cuba. It was at once submitted for perusal to the Attorney-General of the United States, who, in a communication which I have just received from him, states that you should cause to be prepared an affidavit of the person or persons who know the facts stated in
[65] your paper, *to be laid before the district attorney at New York forthwith.

Without such an affidavit, that officer would not have the means of procuring the indictment and arrest of the persons implicated.

The Attorney-General further states that he will telegraph to the marshal at New York to keep a watch upon the place referred to.

I am, sir, with the highest consideration, yours, &c.,

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS, &c., &c., &c.

Mr. Hoar, Attorney-General, to Mr. Barlow, United States marshal.

[Telegram.]

WASHINGTON, *June* 19, 1869.

FRANCIS C. BARLOW, *United States Marshal, New York City:*

Military expedition, to sail within two days, reported as organizing at 71 Broadway, room 36 at 636 Broadway, at 12 East Houston street, and in New York Casino, same street. Look out for them.

E. R. HOAR,
Attorney-General.

Mr. Boutwell, Secretary of the Treasury, to Mr. Fish, Secretary of State.

TREASURY DEPARTMENT, *June* 24, 1869.

[66] DEAR SIR: Our detectives inform us that a vessel *is fitting out in Philadelphia with munitions of war, and taking on board a considerable number of men destined to aid the revolutionists in Cuba.

We have not been able to learn the name of the vessel, but two men who represent themselves as enlisted for the service propose furnishing information if they can be compensated for it.

Upon the information I have received, I have directed the collector of customs at Philadelphia, Pennsylvania, to make such search as is in his power for the purpose of ascertaining the facts.

I am, very truly, yours, &c., &c.,

GEO. S. BOUTWELL,
Secretary of the Treasury.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Fish, Secretary of State, to Mr. Boutwell, Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, June 24, 1869.

SIR: I have received your letter of to day, representing that a vessel is fitting out in Philadelphia for the revolutionists in Cuba, and that two men, claiming to have been enlisted for that service, offer information if paid therefor.

In reply, I have to state that this Department will cause a reasonable sum to be paid for the information referred to.

[67] *A copy of your letter has been sent to the Attorney-General.

I am, dear sir, yours, &c., &c.,

HAMILTON FISH.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

Mr. Boutwell, Secretary of the Treasury, to Mr. Moore, collector.

[Telegram.]

WASHINGTON, *June* 24, 1869.

HENRY D. MOORE, Esq.,
Collector of Customs, Philadelphia, Pennsylvania:

I have reason to believe that a vessel with armament and an unusually large number of men is in your port, with the design to leave to-day or to-morrow in aid of the insurgents of Cuba. Name of vessel not known, nor other particulars. Have search made, and report.

GEO. S. BOUTWELL.

Mr. Huckel, deputy collector, to Mr. Boutwell, Secretary of the Treasury.

CUSTOM-HOUSE, PHILADELPHIA,
Collector's Office, June 24, 1869.

SIR: I have the honor to acknowledge the receipt of your telegram of this date relative to suspicious vessels fitting out at this port in aid of the insurgents of Cuba, and respectfully beg leave to say that the

revenue steamer Seward was directed some ten days since to keep a diligent watch on two certain vessels that had attracted the sus-
[68] picions of some of the officers of the *revenue.

I have directed the surveyor to instruct the officers under his charge to use due diligence, and no efforts will be spared to prevent a violation of the neutrality laws.

I am, very respectfully, yours, &c.,

B. HUCKEL,
Deputy Collector of Customs.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney.

DEPARTMENT OF STATE,
Washington, June 26, 1869.

SIR: I have laid before the President your letter of yesterday, referring to the violence perpetrated on the deputy marshal who had the custody of Colonel Ryan, and also on the marshal's officer in charge of the Quaker City. He directs me to say that, under all circumstances, the officers of the law are expected to discharge their duty faithfully, vigorously, and legally, and that they will be sustained by the Government while so doing; and that the power of the Government will be exercised to the extent needed for their protection in such discharge of duty, or in vindication of the majesty of the law.

[69] He desires such further and more detailed *information as you may be able to furnish with respect—

1. To the violence on the officer in charge of Ryan;
2. To the violence on the officer in charge of the Quaker City;
3. The attempts to intimidate or influence the grand jury;
4. The sending of any threatening letters;

to enable him to adopt such measures as may be proper;

He requests that you will suggest the course of action that occurs to you, with your more intimate knowledge of the facts and acquaintance with the attendant circumstances, as the most expedient to vindicate the past outrages, and to prevent the recurrence of similar violations of the laws. You will be pleased, in this connection, to consider the propriety or expediency of the offer of a reward for the arrest of the parties guilty of the outrages upon the marshal's officer, or for evidence that may lead to the arrest and conviction of such guilty parties.

Very respectfully, yours,

HAMILTON FISH.

Hon. EDWARDS PIERREPONT,
United States Attorney New York.

Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney.

[Telegram.]

DEPARTMENT OF STATE,
Washington, June 26, 1869.

Hon. EDWARDS PIERREPONT, *District Attorney, New York:*

[70] The marshal and his officers will be sustained *in their duties at all hazards. Instructions by mail this afternoon. Get the letter.

HAMILTON FISH.

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney General.

[Telegram.]

NEW YORK, *June* 28, 1869.

ATTORNEY-GENERAL, *Washington:*

On Saturday night an expedition tried to get off. The men went aboard several tugs to be transferred no doubt to a large vessel. We could not track the tugs in the fog, though we were carefully watching the harbor. I have no idea anything got to sea. I seized the Catharine Whiting, because I think it probable that she was to take off these men. I do not think I have got enough proof for the courts to hold her. But I think that to let her go until I am satisfied that she is not going to take off these men, will be deliberately to let an expedition slip. I may get more particulars this morning which will satisfy me that I am wrong. Otherwise I shall detain her without process until instructed by you to let her go. I again earnestly ask the use of some of the navy-yard tugs.

FRANCIS C. BARLOW,
United States Marshal.

71] **Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.*

[Telegram.]

NEW YORK, *June* 28, 1869.

ATTORNEY-GENERAL, *Washington:*

I have arrested General Goicuria, said to be the leader of the expedition on board the Whiting, under an assumed name, and the vessel has been libeled.

FRANCIS C. BARLOW,
United States Marshal.

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

NEW YORK, *June* 28, 1869.

The tugs are at Gardner's Point, on Long Island, opposite New London, waiting for the Catharine Whiting. Will you telegraph at once to the United States revenue-cutter at New London to obey my orders? I want to send her over to detain the tugs. Please answer.

FRANCIS C. BARLOW.

Mr. Pierrepont, district attorney, to Mr. Fish, Secretary of State.

[Telegram.]

NEW YORK, *June* 29, 1869.

Hon. HAMILTON FISH, *Secretary of State:*

Colonel Ryan, with his expedition of some four hundred men, will
[72] be captured by the revenue-*cutters, which we have dispatched.

They will reach here this night. What shall we do with all these men?

Please read the eighth section of the neutrality act, 3d Statutes, page 449. You will see that the President has full power, and so have such other persons as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of any such ship, or vessel, &c. Please communicate this forthwith to the President, and say that the forces are so large that unless the President will use his powers, or delegate the same as provided in this act, we must give up any further attempts to stop expeditions at large.

ED. PIERREPONT,
United States Attorney.

Mr. Fish, Secretary of State, to the President.

DEPARTMENT OF STATE,
Washington, June 29, 1869.

The Secretary of State has the honor to lay before the President the inclosed telegram of this date, just received from Mr. Pierrepont, asking instructions as to steps to be taken in regard to Colonel Ryan and his expeditionary party of four hundred men at New York.[1]

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[73] **Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney.*

[Telegram.]

DEPARTMENT OF STATE,
Washington, June 29, 1869.

Hon. EDWARDS PIERREPONT, *United States District Attorney,*
No. 41 *Chambers street, and at* 103 *Fifth avenue, New York:*

By order of the President, the captured vessels, with the men engaged in the unlawful expedition, will be taken to the navy-yard at Brooklyn, and there put under the charge and control of the officer in command of the yard, who is empowered by the President, by virtue of the power for that purpose in him vested, to employ such part of the naval forces of the United States as are under his command, for the purpose of taking possession of and detaining such ship or vessel for the purposes intended by law.

By order of the President:

HAMILTON FISH,
Secretary of State.

[1] For inclosure see preceding letter.

Mr. Pierrepont, district attorney, to Mr. Fish, Secretary of State.

[Telegram.]

NEW YORK, *June* 30, 1869.

Hon. HAMILTON FISH, *Secretary of State:*

Your order has been received. The men are now at the navy-yard under arrest.

[74] Your order came in good time, and was greatly * needed in the absence of the Secretary. Let this forthwith be delivered to the President.

EDWARDS PIERREPONT,
United States Attorney.

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Mr. Pierrepont, district attorney, to Mr. Fish, Secretary of State.

NEW YORK, *June* 30, 1869.

Hon. HAMILTON FISH, *Secretary of State:*

Under your orders, as the President directed, the prisoners, about one hundred and sixty in number, have been turned over to the admiral in command of the navy-yard. A third tug is on its way with other prisoners and will take the same course. I have just returned from an interview with the admiral at the navy-yard. Colonel Ryan is believed to be concealed in one of the tugs. Search is being made. The admiral will write for full orders from the President.

Yours, respectfully,

EDWARDS PIERREPONT,
United States Attorney.

[75] * *Mr. Field, Assistant Attorney-General, to Mr. Fish, Secretary of State.*

ATTORNEY-GENERAL'S OFFICE,
Washington, June 30, 1869.

SIR: I have the honor to transmit, herewith, copies of telegrams received last night and this morning from the United States marshal for the southern district of New York.

These telegrams have been communicated to the Secretary of the Treasury, and the Secretary of the Navy has been requested to keep the Whiting safely at the navy-yard in Brooklyn.

Very respectfully,

W. A. FIELD,
Acting Attorney-General.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure No. 1.]

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

NEW YORK CITY, *June* 29, 1869.

To the ATTORNEY-GENERAL:

Three tugs, two schooners, and a sloop left Gardner's Point this morning at 5 a. m. They had been notified of the seizure of the Whiting. It is impossible that they should attempt to go to Cuba in their
76] present vessels; *probably they will run down the coast to some port to wait for another steamer. I think the cutters at Philadelphia, and at all points on the coast, should be ordered to put out and look for them. Also the Newport and New Bedford authorities should be notified. They will try to get a steamer at some other port. I should like to be informed of what orders may be given.

FRANCIS C. BARLOW.

[Inclosure No. 2.]

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

NEW YORK CITY, *June* 29, 1869.

To the ATTORNEY-GENERAL:

The revenue-cutter Campbell has gone to Gardner's Point, for the expedition. Some of the men on the Whiting say she was to take off the expedition at the Delaware breakwater. If convenient, I suggest that the nearest cutter to the breakwater be ordered to look after and detain the expedition. The H. McCool is one of their tugs. I am perfectly satisfied that the Whiting was their vessel. She is at the navy yard. Will you ask the Navy Department to keep her there for me?

FRANCIS C. BARLOW.

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[77] *[Inclosure No. 3.]

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

To the ATTORNEY-GENERAL:

NEW YORK CITY, *June* 30, 1869

We have captured the McCool, John Chase, and Mabey, three of the expedition tugs, with men, arms, and ammunition on board. The expedition is wholly broken up.

FRANCIS C. BARLOW,
United States Marshal.

Mr. Boutwell, Secretary of the Treasury, to Mr. Hoar, Attorney-General.

TREASURY DEPARTMENT,
Washington, June 30, 1869.

SIR: I have the honor to transmit herewith copies of telegrams sent by this Department on the 29th, and this date, to the following-named officers regarding the enforcement of the neutrality laws:

On the 29th, the collector of customs, at New London; United States marshal, New York City; and this date to collector of customs, New Bedford, Massachusetts; collector of customs, Newport, Rhode Island; collector of customs, Philadelphia; collector of customs, New York; collector of customs, Wilmington, Delaware; collector of customs, Baltimore.

[78] Since the receipt of your letter of this date *transmitting copy of telegram from United States marshal at New York, announcing the capture of three of the expedition's tugs, and the breaking up of the expedition, dispatches have been sent revoking previous telegrams with the exception of those to the collector of customs at New London, Newport, and New Bedford.

I am, very respectfully,

GEO. S. BOUTWELL,
Secretay of the Treasury.

Hon. F. R. HOAR,
Attorney-General, United States.

[Inclosure No. 1.]

Mr. Boutwell, Secretary of Treasury, to Mr. Barlow, United States marshal.

[Telegram.]

TREASURY DEPARTMENT.
Washington, June 30, 1869.

FRANCIS C. BARLOW, *United States Marshal, New York City:*

Commanding officer of cutter Campbell, New London, has been directed to obey your orders.

GEO. S. BOUTWELL,
Secretary of the Treasury.

[Inclosure No. 2.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Grinnell, collector.

[79] *TREASURY DEPARTMENT,
Washington, June 31, 1869.

LAWRENCE GRINNELL,
Collector of Customs, New Bedford Massachusets:

See that no vessel at your port is employed in violating neutrality laws.

GEO. S. BOUTWELL,
Secretary of the Treasury.

[Inclosure No. 3.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Thomas, collector.

[Telegram.]

JOHN L. THOMAS, Jr., *Collector of Customs, Baltimore:*

Department informed that expedition in violation of neutrality-laws is expected to embark from the capes of Virginia; send Northerner down to cruise in that vicinity, watching and detaining suspicious vessels. Expedition consists of three tugs, one named H. McCool, two schooners, and one sloop.

GEO. S. BOUTWELL,
Secretary of the Treasury.

[Inclosure No. 4.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Marshall, collector.

[80] [Telegram.]

TREASURY DEPARTMENT,
Washington, June 30, 1869.

GEO. T. MARSHALL, *Collector of Customs, New London, Connecticut:*

Direct commanding officer of revenue-cutter Campbell to obey any orders he may receive from Marshal Barlow.

GEO. S. BOUTWELL,
Secretary of the Treasury.

[Inclosure No. 5.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Nolen, collector.

[Telegram.]

TREASURY DEPARTMENT,
Washington, June 30, 1869.

WM. D. NOLEN, *Collector of Customs, Wilmington, Delaware:*

Department informed that expedition in violation of neutrality laws is expected to embark at mouth of Delaware Bay. Send Miami down to cruise outside of breakwater to watch and detain suspicious vessels. Expedition consists of three tugs, one named H. McCool, two schooners, and one sloop.

GEO. S. BOUTWELL,
Secretary of the Treasury.

[81] *[Inclosure No. 6.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Grinnell, collector.

[Telegram.]

TREASURY DEPATMENT,
Washington, June 30, 1869.

MOSES H. GRINNELL, *Collector of Customs, New York:*

Station one of revenue tugs in place of McCulloch, and put latter under temporary orders of Marshal Barlow, if he wishes.

GEO. S. BOUTWELL,
Secretary of the Treasury.

[Inclosure No. 7.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Moore, collector.

[Telegram.]

TREASURY DEPARTMENT,
Washington, June 30, 1869.

HENRY D. MOORE, *Collector of Customs, Philadelphia:*

Department informed that expedition in violation of neutrality laws is expected to embark at mouth of Delaware Bay.

Send Seward down to watch and detain suspicious vessels. Expedition consists of three tugs, one named H. McCool, two schooners, and one sloop.

GEO. S. BOUTWELL,
Secretary of the Treasury.

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[82] *[Inclosure No. 8.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Barlow, United States marshal.

[Telegram.]

TREASURY DEPARTMENT,
Washington, June 30, 1869.

FRANCIS C. BARLOW,
United States Marshal, New York City:

Steamers Seward and Miami have been ordered to the breakwater; Northerner to the capes of Virginia. Collectors at Newport and New Bedford instructed as to employment of vessels in violating neutrality laws. Steamer McCulloch at New York placed temporarily under your orders.

GEO. S. BOUTWELL,
Secretary of the Treasury.

[Inclosure No. 9.]

Mr. Boutwell, Secretary of the Treasury, to Mr. Macey, collector.

[Telegram.]

TREASURY DEPARTMENT,
Washington, June 30, 1869.

SETH W. MACEY,
Collector of Customs, Newport, Rhode Island:

See that no vessel at your port is employed in violating neutrality laws.

GEO. S. BOUTWELL,
Secretary of the Treasury.

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

[83] *NEW YORK, *July* 1, 1869.

The ATTORNEY-GENERAL, *Washington:*

The Mahoning has seized, at Milford, Connecticut, the schooners Fancy and Winona, belonging to the expedition. The Winona has its arms and ammunition on board. The Fancy has discharged most of its cargo of arms, and it is now on the dock at Milford. It is out of my jurisdiction, and will you telegraph at once to the nearest marshal to go to Milford and seize it? Let me know.

FRANCIS C. BARLOW,
United States Marshal.

Mr. Field, Assistant Attorney-General, to United States marshal, New Haven, Connecticut.

[Telegram.]

WASHINGTON, *July* 1, 1869.

UNITED STATES MARSHAL,
New Haven, Connecticut:

The schooners Fancy and Winona are at Milford, alleged to have violated the neutrality laws. See district attorney, and take care of them and the men found on board.

W. A. FIELD.

Mr. Field, Assistant Attorney-General, to Mr. Willey, district attorney.

[Telegram.]

WASHINGTON, *July* 1, 1869.

HIRAM WILLEY, Esq.,
United States Attorney, New London, Connecticut:

[84] *Take care of the schooners Fancy and Winona, with their arms,

ammunition, and men, now at Milford, alleged to have violated the neutrality laws.

W. A. FIELD.

Mr. Field, Assistant Attorney-General to Mr. Barlow, United States marshal.

[Telegram.]

WASHINGTON, *July* 1, 1869.

F. C. BARLOW,
United States Marshal, New York City:

Have sent telegrams to marshal and district attorney of Connecticut, to take care of the Fancy and Winona.

W. A. FIELD.

Mr. Willey, district attorney, to Mr. Field, Assistant Attorney-General.

[Telegram.]

NEW LONDON, CONNECTICUT. *July* 1, 1869.

W. A. FIELD,
Assistant Attorney-General, Washington:

Your telegram is received. I have telegraphed the marshal at New Haven to proceed at once to Milford, to hold the schooners Fancy and Winona, their arms, ammunition, and men, in custody till further orders. The enlistment of men was in the southern district of New York, and should be presented in that district.

[185] Is it the purpose of the Government to libel *the vessel and cargo as forfeited? If so, instruct me to do so.

HIRAM WILLEY,
United States Attorney.

Mr. Carll, United States marshal, to Mr. Field, Assistant Attorney-General.

[Telegram.]

NEW HAVEN, CONNECTICUT, *July* 2, 1869.

Hon. W. A. FIELD,
Assistant United States Attorney-General:

The schooners Fancy and Winona both at the dock in New Haven, with a portion of cargo; balance of cargo in Milford; all in my custody, awaiting further orders.

P. R. CARLL,
United States Marshal.

[86] **Mr. Field, Assistant Attorney-General, to Mr. Willey, district attorney.*

[Telegram.]

WASHINGTON, *July* 2, 1869.

HIRAM WILLEY,
United States Attorney, New London, Connecticut:

Libel vessels and cargo, if you think they are forfeitable; otherwise detain them, and report facts to this office.

W. A. FIELD,
Assistant Attorney-General.

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

NEW YORK, *July* 2, 1869.

ATTORNEY-GENERAL, *Washington:*

There are not to exceed one hundred and seventy-five men. The balance escaped ashore before capture. Who shall feed them? They will starve unless some one does. Who must take charge of them, I or the admiral? Please answer. Unless these men are discharged at once, I learn that a *habeas corpus* will be sued out for them. What return can be made to it?

FRANCIS C. BARLOW,
United States Marshal.

Mr. Field, Acting Attorney-General, to Mr. Barlow, United States marshal.

[Telegram.]

[87] *WASHINGTON, *July* 2, 1869.

FRANCIS C. BARLOW, *United States Marshal, New York City:*

The President has sent instructions about feeding men. All officers and men are to be arrested on criminal process. In general, officers and all persons who have forfeited neutrality recognizance, or broken from arrest, are to be held to good bail for appearance and good behavior. The men generally are to be discharged, on their own recognizance, for appearance and good behavior.

The vessels and tugs are to be libeled, if the district attorney thinks they are forfeitable; otherwise to be detained, and the attorney is to report facts, with his opinion, immediately to this office.

Give copy of this to district attorney as his authority.

W. A. FIELD,
Acting Attorney-General.

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

BROOKLYN, NEW YORK, *July* 2, 1869.

ATTORNEY-GENERAL, *Washington:*

I have taken full charge of the men, according to your order of this morning, and will see that they are rationed at my expense, and will hold them until further orders.

FRANCIS C. BARLOW,
United States Marshal.

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[88] **Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, July 2, 1869.

SIR: The confusion yesterday and this morning, as to who should take charge of and feed the prisoners, arose from the fact that the orders of the Navy Department of July 1, saying that the captured men were to be taken charge of and fed by me, were not communicated to me. No duplicate was sent to me by the Navy Department, nor copy by the admiral; consequently, the last order I knew of was that given on June 29, through the district attorney, that the men and vessels be put into the control and charge of the admiral. Therefore I supposed that he, and not I, was to keep and feed them. To-day I learned of orders from the Navy Department of July 1, and got your dispatch of this morning, to keep the prisoners until further orders. I have arranged to feed them. The telegram of the President as to their disposition has been received, and shall be obeyed.

Respectfully,

FRANCIS C. BARLOW,
United States Marshal.

ATTORNEY-GENERAL, *Washington.*

Mr. Davis, Acting Secretary of State, to Mr. Pierrepont, district attorney.

DEPARTMENT OF STATE,
[89] **Washington, July* 2, 1869.

SIR: I am directed by the President to acknowledge the receipt of your telegram of the 1st instant, relative to the disposition to be made of G. H. Norris, William Seisdorf, J. F. Clancey, Ralph Harmon, and F. W. Conant.

The President does not deem it advisable immediately to release the prisoners, without substantial bail. But he would like your opinion upon the propriety of releasing them on their own recognizance as soon as matters have quieted a little.

I am, sir, &c.,

J. C. B. DAVIS,
Acting Secretary.

EDWARDS PIERREPONT, Esq.,
United States Attorney, New York.

Mr. Field, Acting Attorney-General, to Mr. Carll, United States marshal, and to district attorneys.

WASHINGTON, *July* 3, 1869.

SIR: I have received your telegram of yesterday, relating to the schooners Fanny and Winona, their cargoes, and the men found on board. I have sent a telegram to the district attorney of Con-
[90] necticut, instructing him in respect to the schoon*ers and their cargoes. In regard to the men, you must report the facts to him. If they have committed any crime, it has probably been committed in the southern district of New York; and they must be tried in the district where the crime was committed. But they can be arrested and held to answer in any district where they may be found. It is important that you ascertain whether any of these men were leaders in the movement, or have heretofore been arrested on a charge of violating the neutrality laws. If they are merely the crews of the steamers, they need not be arrested on criminal process, but the district attorney should be consulted in regard to legally detaining them in such a manner as may be necessary to secure their attendance as witnesses in the trial of any proceedings that may be instituted against the schooners or their cargoes. If they are men enlisted in the expedition, but who took no active part in setting it on foot or organizing it, they should be arrested on criminal process, but may, unless the district attorney of New York thinks otherwise, be released from arrest, on their own recognizance, to appear and answer to any indictment that may be found against them, and on their own recognizances for future good behavior. So many as were leaders in the expedition are to be arrested on criminal pro-
[91] cess, and either committed or held to bail with sureties to *answer to any indictment that may be found against them, and not hereafter to violate the neutrality laws.

The district attorney of Connecticut should communicate with the district attorney of New York, that they may act in concert; and you are requested to ascertain the names of the persons, their residences, occupations, and connection with the expedition, and send a statement of these facts to both these district attorneys.

Very respectfully,

W. A. FIELD,
Acting Attorney-General.

PETER R. CARLL, Esq.,
United States marshal, New Haven, Connecticut.

[Copies of above were sent, same date, to district attorney for Connecticut and district attorney for southern district of New York.]

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

QUARANTINE STATION, NEW YORK,
July 3, 1869.

The ATTORNEY-GENERAL:

All prisoners will be released, on their own recognizance, this afternoon, except Alfaro and Bassora. None others of enough importance to be held on bail.

FRANCIS C. BARLOW,
United States Marshal.

[92] *Mr. Field, Acting Attorney-General, to Mr. Barlow, United States marshal.*

WASHINGTON, *July* 3, 1869.

FRANCIS C. BARLOW, *United States Marshal, New York:*

The officers and men must be put in judicial custody as soon as possible, either under separate or joint complaints; and if a writ of *habeas corpus* issues before they are arrested on a warrant, pending the hearing of the writ, a warrant can be obtained, and immediately served, if they are discharged at the hearing.

Give copy to district attorney.

W. A. FIELD.
Acting-Attorney General.

Mr. Hoar, Attorney-General, to Mr. Pierrepont, district attorney.

WASHINGTON, *July* 6, 1869.

SIR: I am instructed by the President to say to you that your course in prosecuting with energy and vigor the violations of the neutrality laws of the United States meets his full approbation.

Whatever may be the sympathies felt by the Government or people of the United States with the inhabitants of other countries seeking to vindicate their liberty, or acquire national independence, a [93] *violation of the laws of the United States, by their agents or sympathizers, cannot be tolerated. It is the duty of every executive officer faithfully and fearlessly to administer the law; and the United States will never permit, or connive at, the fitting out of military expeditions, within our territory, against any country with whom we are at peace. The nation will conduct and control its own wars, and will not allow private citizens, or foreigners who enjoy our hospitality and protection, to make, with impunity, this country the base of hostile operations.

The President also directs me to to say to you that he desires that you will use every means in your power to arrest and punish the lawless men who have assaulted and obstructed the deputies of the marshal in the discharge of their official duties.

It has been represented to me that threatening letters have been addressed to the members of the grand jury in attendance upon the district court, for the purpose of deterring them from finding indictments. It would be disgraceful to the Government if such an outrage should be successful in its object, or the perpetrators of it escape with impunity. You will, therefore, use every exertion to detect and punish them, and the whole power of the Government will be used to support you in [94] *your efforts to insure a steady administration *of law, and a firm administration of justice.

Respectfully, yours,

B. R. HOAR,
Attorney-General.

Hon. EDWARDS PIERREPONT,
United States Attorney, New York City.

Mr. M. de Harn, Spanish consul, to Mr. Thomas, collector.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, July 8, 1869.

SIR: In consequence of the just measures lately taken by the New York authorities in order to prevent the departure of expeditions with war material for the insurgents in Cuba, it seems that Cuban agents have turned their eyes toward this port as a base of the operations which they failed to accomplish in New York, thanks to the activity of the authorities.

It is my duty, as the one intrusted at this port with the protection of Spanish interests, to make the above known to your honor, praying that you may be pleased to adopt such steps as will prevent the departure of war-materials suspected of a destination for the insurgents in Cuba.

I doubt not but that, with your well-known zeal, you will grant due consideration to my request; by doing which, Spain will receive a special favor, and the laws of neutrality will be fully carried out.

I avail the opportunity to subscribe myself, &c.,

FANCISCO M. DE HARN,
[95] *Spanish Consul.*

HON. JOHN L. THOMAS, JR.,
Collector of the Port of Baltimore.

Mr. Bowman, special deputy collector, to Mr. Harn, Spanish consul.

CUSTOM-HOUSE, BALTIMORE,
Collector's Office, July 10, 1869.

SIR: I have the honor to acknowledge your communication of the 8th instant, calling my attention to the fact of Cuban agents operating in this port in behalf of the insurgents in Cuba, and expressing the hope that I may adopt such steps as will prevent the departure of warlike materials, &c.

In answer, I have the honor to state that your information has been anticipated by the authorities at Washington, who have issued instructions to me on the subject.

In accordance with these instructions, I immediately organized a detective force, and hope, if there be any parties who contemplate an expedition to Cuba, in violation of the laws, that I may be able to find out all about it, and prevent it. You may rest satisfied of my sincere desire to enforce the neutrality laws of the United States, and to this end I would be thankful for any information that may be in your possession as to the objects and intentions of the agents referred to in your communication.

I have the honor to be, &c.,

R. W. BOWMAN,
Special Deputy Collector.

FRANCISCO M. DE HARN,
Spanish Consul.

[96] *Mr. Hoar, Attorney-General, to Mr. Barlow, United States marshal*

WASHINGTON, *July* 12, 1869.

SIR: Your two letters on the 9th instant were received on the 10th. In respect to the persons said to be assembled at Gardner's Island, if you have reason to believe that they are a hostile expedition organized for military service in Cuba, awaiting means of transportation to that island, the President desires that you will take efficient means to break up the expedition. If Colonel Ryan, who is said to be their commander, is indicted or complained of for resistance to United States officers in discharge of their duty, or for assaults upon them, and you have a warrant for his arrest, you will use every means to arrest and secure him, and to arrest every person against whom you have warrants for similar acts of violence. Perhaps a revenue-cutter should be sent to Gardner's Island for the purpose of service of warrants. Its presence might be sufficient, with the presence of the United States officers, to break up the expedition without the necessity of seizing the persons belonging to it.

There would not seem to me to be any reason for the arrest of such persons, if their hostile purposes were found to be defeated and they were willing or desirous to escape or disperse.

I have conferred with the Secretary of the Treasury in regard to the employment of the revenue-cutters and the steam-tugs in the Government service at New York, and whenever it shall be necessary for the discharge of your duties to put any of them at your disposal, he [97] assures me that on application *by letter or telegram to that effect, the necessary order will be issued. I trust that no further illegal expedition will require your intervention, which has heretofore been so faithful and efficient.

Very respectfully, &c.,

E. R. HOAR,
Attorney-General.

FRANCIS C. BARLOW, Esq.,
New York City.

Mr. Hoar, Attorney-General, to Mr. Pierrepont, district attorney.

WASHINGTON, *July* 12, 1869.

SIR: Your two letters of the 9th were received on the 10th, and in reply I directed you by telegraph of that date to allow the persons referred to in your letter, who are imprisoned in default of bail, to be discharged upon their own recognizance. I believe that nothing else in your communication requires a reply, except to say that it is still the desire of the President that you should use every effort to arrest and punish those who resisted the marshal's officers, and to ascertain, if possible, who were the writers of the threatening letters to members of the grand jury, and see that justice is meted out to them therefor.

Very respectfully,

E. R. HOAR,
Attorney-General.

Hon. EDWARDS PIERREPONT,
United States Attorney, New York City.

[98] *Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney, and to Mr. Barlow, United States marshal.*

DEPARTMENT OF STATE,
Washington, July 13, 1869.

SIRS: I inclose a copy of a note of this date, addressed to me by Mr. Roberts, the Spanish minister. Also a commission from the President of the United States, empowering you, or either of you, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purposes indicated in the eighth section of the act of April 20, 1818, (commonly known as the "neutrality act.") You will confer together whenever practicable in the execution of the powers intrusted to you, and will act in concert so far as possible. But this direction is not to limit the power of either to act independently of the other or without consultation with the other, if the necessity or the circumstances of the occasion seem to him to require independent action and decision. Orders have been directed to the commandant of the navy-yard at Brooklyn to place at your disposal such of the naval forces of the United States as you may require, for the purpose of preventing the carrying on of the military expedition referred to in the note of Mr. Roberts, or any other expedition or enterprise from the terri-
[99] tories or jurisdiction of the United States against the ter*ritories or dominions of any foreign power or state, or of any colony, district, or people with whom the United States are at peace, and more especially against the territories or dominions of Spain or against the island of Cuba.

The President desires and directs that you capture all persons engaged in any and every such unlawful enterprise as above referred to; that the leaders and principal instigators be held to be dealt with according to law.

Believing that many thoughtless and inconsiderate persons may have been misguided, deceived, and led into improper and unlawful engagements, under a sympathy for a people struggling for emancipation from oppressive rule, and for self-government, and more liberal institutions, without due consideration of the unlawfulness of their conduct, and under the temptation of promises held out to them, he authorizes and directs the district attorney of the southern district of New York to release and discharge such of the privates or persons in inferior position or command in any such expedition or enterprise as he shall think may be discharged, with due reference had to the requirements of law and to the future enforcement of the laws and the maintenance of the peace and good order of the country, on such recognizance or security, or on such terms and conditions in each case, as to him shall seem expedient. But he directs that no person engaged in any such expedition or enterprise, who has been already taken in any recent similar unlawful
[100] expedition or enterprise, or who has been indicted * for any violation of the neutrality laws or other laws of the United States, or who has given bail to keep the peace, &c., shall be discharged under this discretionary power given to the district attorney.

The district attorney is directed to make early investigation in order to the execution of this discretionary power, and for the purpose of bringing to punishment those who are leaders and principals in any such unlawful expedition or enterprise, or who shall be the second time arrested or have violated their engagement to maintain the peace.

If any expense is necessary to be incurred for supplying necessary sustenance to the persons who may be taken, you are authorized to incur

the expense and to draw therefor upon this Department, certifying to the accuracy and propriety of the charges. Any other proper expenditure necessary for the prompt and efficient execution of the duty intrusted to you will also be allowed.

If you find that the naval forces thus placed at your disposal be not sufficient, or that any part of the land forces of the United States be necessary for the proper execution of the law, you will immediately advise me.

The President relies upon your discretion, as well as your energy, in discharge of the very important and exceedingly delicate duties thus confided to you.

[101] For the present you will consider the powers thus *given to you to be confined to the prevention of any expedition or enterprise originating or having its present scene or sphere of action within the State of New York, or that part of New Jersey near thereto, or within the States of Connecticut, Rhode Island, and Massachusetts. But you are authorized to pursue and take any person or persons engaged in any such expedition or enterprise into and from any place within the United States or on the high seas.

This power will be limited in time by the necessity of the case, and by the continuance of any unlawful attempt against the authority of the laws of the country, or in violation of the neutral rights and obligations of the United States. The power conferred upon you is, therefore, revokable at the pleasure of the President of the United States.

You will report fully from time to time to this Department your action under the power thus committed to you.

The district attorney will also report to the Attorney-General all cases of persons held for trial or otherwise; also his action in the discharge of those privates or persons in inferior position and command whom he may discharge or release under the discretionary power extended to him.

By order of the President.

I am, sir, &c.,

HAMILTON FISH.

EDWARDS PIERREPONT, Esq.,
District Attorney, and
FRANCIS C. BARLOW, Esq., *Marshal*.

[102] * *Mr. Pierrepont, district attorney, to Mr. Fish, Secretary of State.*

[Telegram.]

NEW YORK, *July* 15, 1869.

Hon. HAMILTON FISH:

The commission of the President and your orders have been received. Will be promptly executed. Present difficulty, as marshal advised, is in finding the ship. Every means will be taken.

Yours, respectfully,

EDWARDS PIERREPONT,
United States Attorney.

Mr. Barlow, United States marshal, to Mr. Fish, Secretary of State.

[Telegram.]

NEW YORK, *July* 15, 1869.

SECRETARY OF STATE:

Authorization received. Some two hundred persons are on Gardner's Island. They refuse to leave on the request of my officers and the cutter. They have robbed the light-house keeper. I must send down a sufficient force to oblige them to leave. I shall act very discreetly. If I cannot get enough marines may I ask for a few troops?

FRANCIS C. BARLOW,
United States Marshal.

Mr. Barlow, United States marshal, to Mr. Fish, Secretary of State.

[Telegram.]

NEW YORK, *July* 15, 1869.

103] *SECRETARY OF STATE:

Have sent more marines to Gardner's Island. Troops not needed at present. There will be no trouble in getting the men on Gardner's Island to disperse, I think. I shall act discreetly and make no commotion.

The cutters and tugs have done all I asked; but I wish to know that I can depend on them.

Grinnell has given me every assistance possible, but is away to-day.

We can find no trace of the William Forster. Perhaps she is to come from some other port to take up men.

All is quiet, apparently; but we are looking out.

FRANCIS C. BARLOW.

Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney, and to Mr. Barlow, United States marshal.

DEPARTMENT OF STATE,
Washington, July 15, 1869.

SIRS: The President intends that there be no want of power placed at your disposal for the arrest of any expedition or enterprise in violation of the neutrality laws, or of the international obligations of this Government. If you cannot get a sufficient naval force, including marines, or if you think that any part of the land forces of the United States, in addition to the naval forces placed at your disposal by authority of the President and under instructions from this Department under date of 13th instant, are necessary or even desirable (in
104] your *judgment) for the successful accomplishment of the duty committed to you, you, and each of you, are authorized to call upon General McDowell, in command of the military force in New

York, for whatever force you may think necessary. Orders have been directed to General McDowell in accordance with this advice.

By orders of the President.

I am, sir,

HAMILTON FISH.

EDWARDS PIERREPONT, Esq., *District Attorney.*
FRANCIS C. BARLOW, Esq., *Marshal, New York.*

Mr. Fish, Secretary of State, to Mr. Roberts, Spanish minister.

DEPARTMENT OF STATE,
Washington, July 15, 1869.

SIR: Referring to your interview with Mr. Davis yesterday, wherein you requested that steps might be taken to prevent the steamer William Foster from going to the aid of persons on Gardner's Island who are supposed to be concerned in a military expedition intended to operate against Spain in Cuba, and in which you said that the William Foster was in New York, but precisely where you could not state, but that the books of the custom-house would show, I have now to inform you that a telegram was at once sent to the district attorney and to the marshal at New York instructing them to inquire at the custom-house for information, and to comply with your request in that respect, and that each of them has replied by telegraph that the vessel cannot be found.

As they have full authority in the premises, and the power, if necessary, to call out troops and to use the naval forces of the republic, I will thank you to communicate any information you have on this subject directly to them, to the end that delay may be avoided, and that the laws may be enforced.

I am, sir, with very high consideration, your obedient servant,

HAMILTON FISH.

Señor Don M. LOPEZ ROBERTS, &c., &c., &c.

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[105] **Mr. Fish, Secretary of State, to Mr. Hoar, Attorney-General.*

DEPARTMENT OF STATE,
Washington, July 16, 1869.

SIR: Inclosed I send you a copy of a telegram just received from the marshal of New York, and will thank you either to instruct him on the subject, or to advise me what answer I shall give.

I have the honor to be, &c.,

HAMILTON FISH.

Hon. E. R. HOAR,
Attorney-General.

Mr. Hoar, Attorney-General, to Mr. Fish, Secretary of State.

ATTORNEY-GENERAL'S OFFICE,
Washington, July 16, 1869.

SIR: I think the case stated in the telegram of Francis C. Barlow, United States marshal for New York, of which you inclose me a copy

in your letter of to-day, just received, is one clearly within the range of the instructions given to him and the district attorney; and my own judgment would be that it would be wise to use military force to seize the unlawful military expedition to which he refers, retaining the parties no longer, however, than may be necessary to effectually break it up.

Very respectfully.

E. R. HOAR,
Attorney-General.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Fish, Secretary of State, to Mr. Barlow, United States marshal.

DEPARTMENT OF STATE,
[106] *Washington, July 30, 1869.*

SIR: I have received your letter of the 26th instant, in relation to the means of detecting and preventing hostile expeditions against friendly powers.

In reply I have to state that you are authorized and directed for the present to continue the employment of the detectives to which your letter refers.

I am, sir, your obedient servant,

HAMILTON FISH.

FRANCIS C. BARLOW, Esq.

Mr. Field, Acting Attorney-General, to Mr. Talbot, district attorney.

WASHINGTON, *August* 16, 1869.

SIR: Information has been received at this office that violations of the neutrality laws of the United States are contemplated by persons setting on foot within the territory of the United States hostile expeditions against Spain in aid of the insurgents in Cuba. It is suggested that preparations are making for such expeditions on or near the Saint Croix River, and particularly at Eastport and Calais. You are instructed to use the utmost diligence in inquiring whether any such hostile expeditions are in preparation or are contemplated within your district; and if you find any evidence sufficient to warrant it, you will cause the necessary complaints, indictments, libels, and information to be prepared in order to prevent any violation of these laws, or to punish offenders against the n.

[107] *The necessary expenses incurred in and the compensation for this service, so far as they are not provided for by the fee bill, will be borne by the Department of State, to which Department the bill of services and expenses, with proper vouchers, should be rendered. This letter is of course confidential.

Very respectfully, your obedient servant,

W. A. FIELD,
Acting Attorney-General.

GEO. F. TALBOT,
United States Attorney, Portland, Maine.

Mr. Potestad, of the Spanish legation, to Mr. Davis, Acting Secretary of State.

LEGATION OF SPAIN IN WASHINGTON,
August 21, 1869.

SIR: I have the honor to inclose, agreeably to your request, a memorandum relative to the subject of this morning's conversation.

I remain, sir, with high regard, your most obedient servant,

LUIS DE POTESTAD.

Hon. J. C. BANCROFT DAVIS, *&c.*

[Inclosed memorandum.]

LEGATION OF SPAIN IN WASHINGTON.
August 21, 1869.

According to information received from the consular agent of Spain at Jacksonville, Florida, who has likewise charge of the ports of Fernandina, Cedar Keys, and Tampa Bay, large quantities of arms, ammunition, and powder are being landed at Fernandina and Cedar Keys, marked "Galveston, Texas." This unusual transportation of war-material, and the extraordinary manner in which it is accom-
[108] plished, at*tracted the attention of the above-mentioned consular agent of Spain, who expresses his conviction that the arms, ammunition, &c., are in reality destined for shipment to the coast of Cuba, either direct from the port where first landed, or from those to which they are subsequently forwarded, the better to escape the vigilance of the authorities.

From this information, as well as from that which is derived from other sources, it is evident that extensive preparations are being made, if they have not already been completed, on the Florida coast and in Texas, to send men and war-material to Cuba, for the purpose of assisting the insurgents there.

In view of these circumstances the Spanish minister asks that instructions be sent, as speedily as possible, to the proper authorities in Florida and in Texas, in order that strict watch may be kept for the prevention of said illegal shipments.

It is suggested that orders similar in spirit be transmitted to the naval forces of the United States stationed at or cruising in the vicinity of Key West.

Mr. Davis, Acting Secretary of State, to Mr. Potestad, of the Spanish legation.

DEPARTMENT OF STATE,
Washington, August 24, 1869.

SIR: Referring to your note of the 21st instant, I have the honor to inform you that on the 17th instant the Attorney-General, having received the same information from other sources, called the atten-
[109] tion of the district attorney and marshal of the United States *in Florida to the subject, and that the senior officer in charge of the

North Atlantic squadron was, on the receipt of your letter, also apprised of the information it contained.

I am, sir, with the highest consideration, your obedient servant,

J. C. B. DAVIS,
Acting Secretary.

Mr. DE POTESTAD.

Mr. Morrill, United States commissioner, to Mr. Hoar, Attorney-General.

[Telegram.]

MACON, GEORGIA, *August* 31, 1869.

Attorney-General HOAR:

Eighty-three persons enlisted for Cuban army will try to leave for Florida to-night. Have telegraphed to marshal at Savannah, and district attorney.

W. C. MORRILL.

Mr. Field, Acting Attorney-General, to Mr. Milledge, district attorney.

[Telegram.]

WASHINGTON, *September* 1, 1869.

JOHN MILLEDGE, Esq.,
United States Attorney, Savannah, Georgia:

If any illegal hostile expedition attempts to leave Savannah for Cuba or elsewhere, stop it and indict the parties.

W. A. FIELD,
Acting Attorney-General.

Mr. Milledge, district attorney, to Mr. Hoar, Attorney-General.

[Telegram.]

ATLANTA, GEORGIA, *September* 2, 1869.

To Attorney-General E. R. HOAR:

Large parties are organizing in this State for Cuba. Twenty-five have been arrested in Macon. I leave for that place to-night. Can
[110] the military be used * to assist in arresting? Please answer to Macon.

JOHN MILLEDGE,
District Attorney.

Mr. Milledge, district attorney, to Mr. Hoar, Attorney-General.

[Telegram.]

MACON, GEORGIA, *September* 3, 1869.

To ATTORNEY-GENERAL:

Can I have authority to employ troops if necessary; also to authorize collector at Savannah to employ light-draught boat to cruise inland? Cutter draws too much water. Answer.

JOHN MILLEDGE,
United States District Attorney.

Mr. Field, Acting Attorney-General, to Mr. Milledge, district attorney.

[Telegram.]

JOHN MILLEDGE, Esq.,
United States Attorney, Macon, Georgia:

Two telegrams received. Revenue-cutters will stop all armed vessels, or vessels with hostile expeditions on board, on your request. If you need a revenue-cutter to cruise, make the request on the cutter and at the same time on this office by telegraph.

Telegraph to cutter at Apalachicola to stop expedition from Fort Gaines. Give notice to such other cutters as you think best to be on the watch. If you wish more authority telegraph at once.

W. A. FIELD,
Acting Attorney-General.

Mr. Milledge, district attorney, to Mr. Hoar, Attorney-General.

[Telegram.]

MACON, GEORGIA, *September* 3, 1869.

To ATTORNEY-GENERAL:

[111] *Yours received. United States marshal overpowered at Fort Gaines. Party left this morning across the river into Alabama; will instruct cutters at every point accessible by telegraph; not being able to procure troops is the cause of their getting away; will use utmost vigilance, and advise by telegraph of results daily.

JOHN MILLEDGE,
United States District Attorney.

Mr. Milledge, district attorney, to Mr. Hoar, Attorney-General.

[Telegram.]

MACON, GEORGIA, *September* 3, 1869.

To Attorney-General HOAR:

Large party of men, thoroughly armed, at Fort Gaines, Georgia, en-

listed for Cuban army. United States deputy marshal finds it impossible to arrest, as the citizens are not sufficiently strong; he telegraphs for troops to assist. General Terry replies that General Halleck will not give the authority. What course shall I pursue? They will get off on special boat to-morrow. Answer.

JOHN MILLEDGE,
United States District Attorney.

Mr. Richardson, Acting Secretary of the Treasury, to Mr. Robb.

[Telegram.]

TREASURY DEPARTMENT,
Washington, September 3, 1869.

THOS. P. ROBB,
Collector of Customs, Savannah, Georgia:

Put steamer McCulloch at command of proper authorities to stop expedition fitting out for Cuba.

WM. A. RICHARDSON,
Acting Secretary.

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[112] **Mr. Field, Acting Attorney-General, to Mr. Rawlins, Secretary of War.*

ATTORNEY-GENERAL'S OFFICE,
Washington, September 3, 1869.

SIR: I send herewith copies of two telegrams from the United States attorney for Georgia, relating to alleged hostile expeditions against Cuba, for your information and such action as you may see fit to take.

Without expressing any opinion on the propriety of employing military force to arrest such expeditions inland without a warrant, I have respectfully to suggest that, if the marshal holds a warrant in his hand issued by any magistrate for the arrest of any person charged with an offense against the neutrality laws, and is unable to execute it with the aid of such civil *posse* as he can command, the aid of a military force in enabling him to serve his process may be desired.

Very respectfully, your obedient servant,

W. A. FIELD,
Acting Attorney-General.

Hon. JOHN A. RAWLINS,
Secretary of War.

For inclosures see *ante*.

General Townsend, Adjutant-General, to General Terry, commanding Department of the South.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
[113] * *Washington, September* 4, 1869.

Brevet Major-General A. H. TERRY,
Commanding Department of the South, Atlanta, Georgia:

United States district attorneys at Atlanta and Macon inform the Attorney-General of large parties being formed to go to Cuba, and ask assistance of United States troops. The latter says a party will get off by special boat from Fort Gaines, Georgia, to-day. The Secretary of War directs that if the marshal holds a warrant in his hands issued by any magistrate for the arrest of any person charged with an offense against the neutrality laws, and is unable to execute it with the aid of such civil force as he can command, you afford him such assistance as may be in your power, on proper application. Acknowledge receipt.

By command of General Sherman:

E. D. TOWNSEND,
Adjutant-General.

SEPTEMBER 4, 1869.

Respectfully returned. The instructions within are approved.

By order of the Secretary of War:

JNO. E. SMITH,
Colonel and Brevet Major-General, U. S. A.

Mr. Richardson, Acting Secretary of the Treasury, to Mr. Casey, collector.

[Telegram.]

TREASURY DEPARTMENT,
[114] * *Washington, September* 4, 1869.

JAMES F. CASEY,
Collector of Customs, New Orleans, Louisiana:

Whenever called upon by the proper authority, you are permitted to place Wilderness at command to prevent filibustering expedition to Cuba.

WM. A. RICHARDSON,
Acting Secretary of the Treasury.

Mr. Richardson, Acting Secretary of the Treasury, to collector, Mobile.

[Telegram.]

TREASURY DEPARTMENT,
Washington, September 4, 1869.

COLLECTOR OF CUSTOMS,
Mobile, Alabama:

Whenever called upon by the proper authority, you are permitted to place Delaware at command to stop filibustering expeditions to Cuba.

WM. A. RICHARDSON,
Acting Secretary of Treasury.

Mr. Field, Acting Attorney-General, to Mr. Milledge, district attorney.

[Telegram.]

Washington, September 4, 1869.

JOHN MILLEDGE, Esq.,
United States Attorney, Macon, Georgia:

[115] *Cutter at Mobile is subject to your order for service near Mobile. Government has no light-draught boat at Savannah. Why do you need one? I cannot now certainly say whether troops can be used. Telegraph United States attorney at Mobile to be on the watch.

W. A. FIELD,
Acting Attorney-General.

Mr. Field, Acting Attorney-General, to Mr. Milledge, district attorney.

[Telegram.]

WASHINGTON, *September* 4, 1869.

JOHN MILLEDGE, Esq.,
United States Attorney, Macon, Georgia:

If the marshal needs troops to aid him in serving criminal process the department commander has been ordered to furnish them. If necessary, give notice to the United States attorney at Mobile.

W. A. FIELD,
Acting Attorney-General.

Mr. Morrill, United States commissioner, to Mr. Hoar, Attorney-General

[Telegram.]

MACON, GEORGIA, *September* 6, 1869.

ATTORNEY-GENERAL UNITED STATES:

Colonel Milledge, with Deputy Marshals Watson and Cox with *posse comitatus*, left for Fort Gaines this morning. Report that filibusters could not get over shoals in river.

[116] *Have forwarded your telegrams.

W. C. MORRILL,
United States Commissioner.

Mr. Milledge, district attorney, to Mr. Hoar, Attorney-General.

[Telegram.]

MACON, GEORGIA, *September* 6, 1869.

Attorney-General HOAR, *Washington, D. C.:*

SIR: I have the honor and satisfaction of reporting herewith the result of our efforts to capture the expedition *en route* for Cuba.

Finding it was impossible to procure troops in time from General Terry, upon consultation with the United States commissioner, it was determined that Acting Marshal Watson, assisted by Deputy Marshal Cox, should leave with a select *posse* for the place of rendezvous, viz: Fort Gaines. It was also thought desirable that I should accompany them, which I did. We left on the morning of the 4th instant, arriving that evening at Fort Gaines. We found they had broken camp, hearing, by telegram, of our purpose, and gone to Eufaula, Alabama.

On the 5th we left by steamer for Eufaula, and succeeded in capturing fourteen of the party; the others had disbanded and scattered, and various and conflicting rumors were afloat regarding their where-
[117] abouts. I feel *confident in asserting that the course pursued has completely broken up the expedition, at least for the present.

The preliminary examination commences before United States Commissioner Morrill to-morrow. Will report in full by letter.

JOHN MILLEDGE,
United States District Attorney.

Mr. Milledge, district attorney, to Mr. Weems.

MACON, *September* 6, 1869.

MY DEAR SIR: Having just returned to this city from a very fatiguing pursuit after Cuban filibusters, whom I have delivered over to the United States commissioner at this place for trial, I feel that, under the circumstances, the Government I represent will sanction my employing counsel to assist me in their prosecution, and which I now respectfully request you to do.

After the proceedings which may be had in the matter, I will approve and send forward your bill for professional services, which I trust you will make as reasonable as possible.

Yours, very truly.

JNO. MILLEDGE,
United States District Attorney for Georgia.

Colonel WEEMS.

[118] **Mr. Field, Acting Attorney-General, to Mr. Baldwin, district attorney.*

WASHINGTON, *September* 13, 1869.

SIR: I have been informed that large quantities of arms and ammunition have been recently shipped from Cedar Keys, Florida, to Galveston, Texas. These arms and ammunition are supposed to be the property of individuals, and it is conjectured that they are intended to be used in arming hostile expeditions against Cuba. You are requested to watch carefully for any indications of such expeditions, and to act promptly in preventing any violation of the neutrality laws of the United States, and in punishing all persons who violate them.

Very respectfully,

W. A. FIELD,
Acting Attorney-General.

D. J. BALDWIN,
United States Attorney, Galveston, Texas.

Mr. Davis, Acting Secretary of State, to Mr. Boutwell, Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, September 28, 1869.

SIR: Confidential information has come to this Department that there is some reason to apprehend that the proprietors of the British brig Edith, now at New Orleans, are about to attempt a violation of
[119] *the neutrality laws of the United States, by engaging in an armed expedition against the Spanish authorities in Cuba. The informant does not desire to have his name disclosed, and the information he gives is vague and imperfect. Will you have the goodness to instruct the proper officials under your directions by telegraph to watch the vessel carefully, and to ascertain if there be anything suspicious in her preparations, and, if they have reason to believe that she is about to engage in an unlawful occupation, to take the necessary steps to prevent her from doing so.

I have the honor to be, &c.,

J. C. B. DAVIS,
Acting Secretary.

Hon. GEO. S. BOUTWELL,
Secretary of the Treasury.

Mr. Harlow, United States marshal, to Mr. Fish, Secretary of State.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, November 8, 1869.

SIR: I have the honor to inform you that I am employing, the same as my predecessor, General Barlow, one superintendent and two or three detectives, (as circumstances require,) to learn of any infringements of the neutrality law.

Very respectfully,

S. R. HARLOW,
United States Marshal.

Hon. HAMILTON FISH,
Secretary of State.

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[120] **Mr. Fish, Secretary of State, to Mr. Harlow, United States marshal.*

DEPARTMENT OF STATE.
Washington, November 12, 1869.

SIR: Your letter of the 8th instant, in which you inform me that you are continuing in your employment, the same as your predecessor, one superintendent and two or three detectives, as circumstances require, has been received. Your proceedings as therein narrated are approved. You are expected, however, to take care that no more expense be incurred in the employment of assistance than shall be required in maintaining a rigid enforcement of our neutrality laws.

I am, sir, &c.,

HAMILTON FISH.

S. R. HARLOW, Esq.,
United States Marshal for the Southern District of New York.

Mr. Harlow, United States marshal, to Mr. Fish, Secretary of State.

[Extract.]

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, November 10, 1869.

SIR: From the activity which seems to pervade Cuban circles, and from information gathered from the Junta by my detectives, I am inclined to the opinion that measures are on foot to get off an expedition. I have enjoined extra vigilance upon all the detectives, and shall use every endeavor to stop any expedition which may try to sail from
[121] this port. The *only source from which I can get information relative to Cuban matters is from the Spanish consul, and the superintendent and two detectives connected with Pinkerton's agency, whom I continue to employ the same as my predecessor.

I have only one revenue-cutter at my command—the Seward. If any emergency arises, I shall do the very best that can be done with the means at my command.

Very respectfully, &c.,

R. S. HARLOW,
United States Marshal.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Boutwell, Secretary of the Treasury, to Mr. Fish, Secretary of State.

TREASURY DEPARTMENT,
Washington, November 10, 1869.

SIR: On Monday last Mr. Moore, the collector of customs at Philadelphia, informed me that the ram Atlanta, a vessel constructed for war purposes, was lying in the harbor, and had there recently taken on board four large guns. Upon Mr. Moore's representation, I directed him to place his officers on board the Atlanta, and to prevent her going to sea until her true character and purposes could be ascertained. I have this morning received from Mr. Moore a letter, dated on the 9th instant, covering a report made by E. O. Goodrich, surveyor of the port
[122] of Philadelphia, giving further information concerning *the suspected vessel, copies of which letter and report I have the honor herewith to transmit to you.

I am, very respectfully, &c.,

GEO. S. BOUTWELL,
Secretary of the Treasury.

Mr. FISH,
Secretary of State.

[Inclosure No. 1.]

Mr. Moore, collector, to Mr. Boutwell, Secretary of the Treasury.

CUSTOM-HOUSE, COLLECTOR'S OFFICE,
Philadelphia, November 9, 1869.

SIR: I have the honor to inclose the report of E. O. Goodrich, esq.,

surveyor of the port, in regard to an examination of the ram Atlanta, seized by instructions, on the 8th instant, from your Department.

Mr. Oakes Smith, with the Haytian general, waited on me this morning, and produced evidence as leads me to believe that the Atlanta has been legitimately purchased for the Haytain government. These gentlemen will wait on you, in a day or two, in regard to the vessel.

I am, very respectfully, &c.,

HENRY D. MOORE,
Collector of Customs.

Hon. GEO. S. BOUTWELL,
Secretary of the Treasury.

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[123] *[Inclosure No. 2.]

Mr. Goodrich, surveyor, to Mr. Moore, collector.

CUSTOM-HOUSE, PHILADELPHIA,
Surveyor's Office, November 9, 1869.

SIR: In compliance with the request contained in your letter of this date, I have caused an examination of the ram Atlanta to be made, now lying at Neafie & Levy's wharf, in charge of officers of the customs.

The Atlanta has recently been repaired, and her machinery put in order. During the last week four large guns have been taken on, which are placed in position, and mounted.

She has no coal, stores, nor ammunition on board, but could be got ready for sea in four or five days.

Two inspectors are in charge of the ram.

Very respectfully,

E. O. GOODRICH,
Surveyor.

Hon. HENRY D. MOORE,
Collector.

Mr. Fish, Secretary of State, to Mr. Boutwell, Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, November 12, 1869.

SIR: I have conferred with Mr. Roberts, the Spanish minister, [124] relative to the ram Atlanta, *the vessel referred to in your communication of the 10th instant, and as he appears to know no reason why that vessel should be longer detained, you are requested to instruct the collector of customs at the port of Philadelphia, where she is now lying, to take no further steps toward preventing her departure.

Your obedient servant,

HAMILTON FISH.

Hon. GEO. S. BOUTWELL,
Secretary of Treasury.

Mr. Fish, Secretary of State, to Mr. Robeson, Secretary of the Navy.

DEPARTMENT OF STATE.
Washington, November 11, 1869.

SIR: I have the honor to inclose herewith a transcript of a communication from the United States marshal for the southern district of New York, of yesterday's date, and will thank you to inform me if a vessel subject to the orders of the Navy Department can, without detriment to the public service, be directed to assist the marshal in preventing the departure from New York, or that vicinity, of any unlawful expeditions in aid of the Cuban insurgents, to which the marshal refers, as believed to be in course of preparation.

I have the honor to be, &c.,

HAMILTON FISH.

Hon. GEO. M. ROBESON.
Secretary of the Navy.

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[125] **Mr. Robeson, Secretary of the Navy, to Mr. Fish, Secretary of State.*

NAVY DEPARTMENT,
Washington, November 13, 1869.

SIR: I have the honor to acknowledge the receipt of your communication of the 11th instant, inclosing a transcript of a communication from the United States marshal for the southern district of New York.

Copies of said communication have been transmitted to Rear-Admiral Stringham, port-admiral at New York, and he has been directed to render the marshal every assistance in his power in preventing the departure from New York, or that vicinity, of any unlawful expeditions in aid of the Cuban insurgents.

Very respectfully,

GEO. M. ROBESON,
Secretary of the Navy.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Robeson, Secretary of the Navy, to Mr. Fish, Secretary of State.

NAVY DEPARTMENT,
Washington, November 15, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th instant, with its inclosures, and to inform you that the United States steamer Frolic, at New York, will be held in readiness to
[126] assist the marshal in thwarting *the departure of any unlawful expedition in aid of the Cuban insurgents.

Very respectfully, your obedient servant,

GEO. M. ROBESON,
Secretary of the Navy.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Richardson, Acting Secretary of the Treasury, to Mr. Fish, Secretary of State.

TREASURY DEPARTMENT,
November 16, 1869.

SIR: I have the honor to inform you, in reply to your letter of the 13th instant, relative to the assignment of a revenue vessel (in place of the Seward, ordered away from New York) to the order of the United States marshal, that Collector Grinnell has been instructed to place the steamer Bronx at command of that officer, &c., and in the enforcement of the neutrality laws.

I am, very respectfully,

WM. A. RICHARDSON,
Acting Secretary of the Treasury.

Hon. HAMILTON FISH,
Secretary of State.

[127] **Mr. Hoar, Attorney-General, to Mr. Fish, Secretary of State.*

ATTORNEY-GENERAL'S OFFICE,
Washington, November 15, 1869.

SIR: I have the honor to transmit herewith (with request for its return after perusal) a letter from the United States district attorney at Philadelphia, inclosing a report of the United States marshal there, relating to the steamer General Dulce.

Very respectfully, yours, &c.,

E. R. HOAR,
Attorney General.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure No. 1.]

Mr. Smith, United States attorney, to Mr. Hoar, Attorney-General.

OFFICE OF THE UNITED STATES ATTORNEY,
EASTERN DISTRICT OF PENNSYLVANIA,
Philadelphia, November 13, 1869.

SIR: The marshal of the district, in accordance with instructions to him, contained in a letter to him from the Assistant Attorney General, bearing date the 5th of November, 1869, visited and examined the steamer General Dulce, now lying in this port. He took with him Captain John H. Young, who is an old and experienced ship-master, well acquainted with such matters, and received from him a statement in writing, relating to *the character and condition of the [128] vessel, a copy of which he has lodged with me. I have the honor to inclose you a copy of this, and of a memorandum annexed, signed by the marshal, showing his concurrence with it.

Very respectfully, yours, &c.,

AUBREY H. SMITH,
United States Attorney.

Hon. E. R. HOAR,
Attorney-General.

[Inclosure No. 2.]

Mr. Young to Mr. Gregory, United States marshal.

PHILADELPHIA, *November* 10, 1869.

SIR: The undersigned, at your request, visited the steamer General Dulce, now about ready for sea, and, after a careful examination, respectfully reports the said steamer is in good order, of small capacity and power, say about 150 horse-power, with large deck accommodations for passengers. The coal-bunkers are full of coal, and contain 87 tons, with the intention of putting 50 tons more in the fore hold, for the purpose of bringing her in trim; as her coal consumption does not exceed 10 tons per day, it will be observed that the above quantity will give her about thirteen days' steaming.

The quantities of stores on board are, perhaps, not more than
[129] sufficient for twenty days' consumption *for her ordinary crew.

In fact, the outfit (excepting coal) is *under* rather than *over* the usual necessities for such a vessel.

Being entirely unsuited for anything else than passengers and a very small amount of cargo, I respectfully submit that there is nothing whatever of a suspicious character either in the vessel or her outfit.

Respectfully,

JOHN H. YOUNG.

E. M. GREGORY,
United States Marshal.

UNITED STATES MARSHAL'S OFFICE,
EASTERN DISTRICT OF PENNSYLVANIA,
Philadelphia, November 11, 1869.

I fully unite and agree with Captain Young in the foregoing report, having accompanied him in the examination of the ship.

E. M. GREGORY,
United States Marshal.

Mr. Harlow, United States marshal, to Mr. Fish, Secretary of State.

[Extract.]

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, November 20, 1869.

SIR: According to instructions contained in your letter under date of November 15, I have the honor to report—

130] *That I have now engaged one superintendent and eight detectives. Two men are kept employed in watching the movements of steamers in this harbor: two men in the confidence of the Junta to report their movements; one man to keep in with the parties who fitted out the Hornet, as it is likely that if any other vessels be fitted out, these same parties will have control of her; two men to keep track of straggling Cubans throughout the city, and watch their boarding-houses

and haunts, and gather general information; one man to watch the shipment of arms and ammunition.

This force will be increased or decreased as circumstances may seem to require.

I am, sir, very respectfully, yours, &c.,

S. R. HARLOW,
United States Marshal.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Harlow, United States marshal, to Mr. Fish, Secretary of State.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, December 7, 1869.

SIR: The Sun of this morning states that an expedition, numbering four hundred and fifty men, sailed from this port for Cuba on Saturday last.

[131] This report is without foundation. Mr. Davies, *superintendent of detectives, informs me that no men could have left without his knowledge, as the closest watch is kept on all the movements of the Junta, and on the straggling parties of Cubans who are scattered throughout the city.

From information, based upon the best authority, however, I believe that an effort will soon be made to get off an expedition, and I have enjoined the strictest vigilance upon Mr. Davies and his subordinates.

We have thrown such a net-work around the Cubans and their sympathizers, that I am positive that no expedition can be fitted out without the knowledge of this office.

I have the honor to be, sir, yours, &c., &c.,

S. R. HARLOW,
United States Marshal.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Harlow, United States marshal, to Mr. Fish, Secretary of State.

[Extract.]

NEW YORK, *April* 27, 1870.

SIR: I have the honor to report that, on the 26th of February last Señor Balbino Cortez, the Spanish consul at this port, called at my office, (then marshal for the southern district of New York,) and

[132] informed me that he had reliable informa*tion that an unlawful expedition of Cubans would attempt to leave this city the same evening. He left with me a memorandum of the steamers in which the expedition would leave, (as he supposed,) with the number of Cubans that would take passage in said steamers. I immediately called upon Mr. Davies, of Pinkerton's detective agency, and also employed two of my most expert deputies to investigate the matter, and, if possible, to thwart the schemes of the filibusters.

Mr. Davies and his detectives, as also my deputies, labored vigorously to discover such an expedition, but, after a watch of three or four days, found that the Spanish consul had either been mistaken, or our watchfulness had become known to the filibusters, who abandoned their intended expedition.

Very respectfully, yours, &c.,

S. R. HARLOW,
(late) United States Marshal.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Fish, Secretary of State, to Mr. Pierrepont, district attorney.

DEPARTMENT OF STATE,
Washington, July 7, 1870.

SIR: The President has been informed that the Spanish minister is in possession of evidence tending to show that some parties in
[133] your district have *been guilty of a violation of the neutrality laws of the United States.

A portion of this evidence has been laid before me by Mr. Lopez Roberts, in affidavits, of which copies are inclosed. Mr. Roberts has been informed that all witnesses within your reach who may be pointed out to you by him, or by the counsel who may be employed by him, will be examined by you, and that you will thereupon institute such proceedings, civil or criminal, as the case may justify.

You will, therefore, please act in the spirit of the communication to Mr. Lopez Roberts should occasion require.

I am, sir, yours, &c.,

HAMILTON FISH.

EDWARDS PIERREPONT, Esq.,
United States District Attorney, New York.

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[135] *CORRESPONDENCE RELATIVE TO THE HORNET.

Mr. Field, Acting Attorney-General, to Mr. Davis, Acting Secretary of State.

ATTORNEY-GENERAL'S OFFICE,
Washington, August 16, 1869.

SIR: I have the honor to transmit herewith copies of a telegram, received Saturday evening last, from the United States marshal at New York, and a telegram sent the same evening to the United States district attorney at Philadelphia, relative to the steamer Hornet; also a telegram just received from the assistant district attorney at Philadelphia, relating to the same vessel.

Very respectfully, yours, &c.,

W. A. FIELD,
Acting Attorney-General.

Hon. J. C. B. DAVIS.
Acting Secretary of State.

[Inclosure No. 1.]

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

[Telegram.]

NEW YORK, *August* 14, 1869.

The Hornet, a long side-wheel steamer, is said to be going from Philadelphia to-night as a Cuban privateer. I have telegraphed the fact to the United States marshal at Philadelphia.

FRANCIS C. BARLOW,

[136] *United States Marshal, New York.*

[Inclosure No. 2.]

Mr. Field, Acting Attorney-General, to Mr. Smith, district attorney, Philadelphia.

[Telegram.]

ATTORNEY-GENERAL'S OFFICE,
Washington, August 13, 1869.

A. H. SMITH, Esq.,
United States Attorney, Philadelphia:

It is said that the steamer Hornet will sail to-night from Philadelphia, in violation of the neutrality laws. Examine the case, and prevent any violation of these laws.

W. A. FIELD,
Acting Attorney-General.

Mr. Valentine, assistant district attorney, to Mr. Field, Acting Attorney-General.

[Telegram.]

PHILADELPHIA, *August* 16, 1869.

Hon. W. A. FIELD, *Acting Attorney-General:*

The Hornet sailed Sunday morning, and was detained.
An examination will be made to lay, and the facts reported.

JOHN K. VALENTINE,
Assistant United States Attorney.

Mr. Valentine, assistant district attorney, to Mr. Field, Acting Attorney-General.

OFFICE OF UNITED STATES ATTORNEY,
EASTERN DISTRICT OF PENNSYLVANIA,

[137] *Philadelphia, August* 16, 1869.

SIR: I have the honor to state that, immediately on the reception of your telegram of the 14th instant, I requested United States Marshal Gregory to prevent the sailing of the steamer Hornet until an examination could be made, as directed by yourself.

These instructions were given to the marshal on yesterday evening about 5 o'clock. He immediately took steps to see that the vessel did not escape.

Yesterday, Sunday morning, about 10 o'clock, the revenue cutter, Captain James commanding, brought the Hornet to, when she was about forty-seven miles below the city.

I inclose herewith a copy of his letter, giving a statement of his action in the case.

I have requested the marshal to have a thorough examination made of the vessel and cargo. This he will have done immediately.

I also inclose a copy of a letter from him, giving a report of his action thus far.

Very respectfully, yours, &c.,

JOHN K. VALENTINE,
Assistant United States Attorney.

Hon. W. A. FIELD,
Acting Attorney-General.

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[138] *[Inclosure No. 1.]

Mr. Gregory, United States marshal, to Mr. Valentine, district attorney.

UNITED STATES MARSHAL'S OFFICE,
EASTERN DISTRICT OF PENNSYLVANIA,
Philadelphia, August 16, 1869.

SIR: In accordance with your letter of Saturday, the 14th instant, requesting that I should detain the steamer Hornet, I have the honor to make the following report. On Saturday, from information obtained, I found that the said steamer had made arrangements to sail during the night or Sunday morning. I at once employed a tug, and proceeded down the river, with a view to intercept the revenue cutter Miami, Captain Jones commanding. I succeeded in communicating with him about 6.30 a. m., below Reedy Island. After giving such instructions as were necessary, I returned to the city, meeting the Hornet on the way down. Captain Jones has since informed me that he arrested her about 10 o'clock Sunday morning, and brought her to this port. I am now making a thorough examination, and will forward full report as soon as concluded.

Very respectfully, &c.,

E. M. GREGORY,
United States Marshal, Eastern District of Pennsylvania.

Hon. JOHN K. VALENTINE,
Assistant United States Attorney.

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[139] *[Inclosure 2.]

Captain Jones to Mr. Valentine, assistant district attorney.

REVENUE CUTTER MIAMI, *August* 16, 1869.

SIR: In reply to your letter of this date in regard to the steamer Hornet, I have to state that yesterday, Sunday, morning, at about 6.30 a. m., United States marshal Gregory visited my vessel: I was then at anchor between Reedy Island and Liston's tree. The marshal requested

me to prevent the steamer Hornet from going to sea. At about 10.10 a. m. I discovered this vessel coming down the river under a full head of steam. I cleared away the starboard battery, fired blank cartridge, and shotted the gun, prepared to fire unless she came to anchor. She immediately rounded to. I then sent an officer on board and directed him to take charge of the vessel. In order that there might be an examination by the proper officers of the Government, I have brought her to this city, where she now lies anchored at the navy-yard under the guns of my ship.

Very respectfully,

JOHN M. JONES,
Captain United States Revenue Steamer Miami.

JOHN R. VALENTINE, Esq.,
Assistant United States Attorney.

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[140] **Mr. Field, Acting Attorney-General, to Mr. Davis, Acting Secretary of State.*

ATTORNEY-GENERAL'S OFFICE,
Washington, August 18, 1869.

SIR: I send inclosed herewith a letter received this morning from the assistant United States attorney at Philadelphia, Pennsylvania, with its inclosures, all relating to the steamer Hornet. There are no facts known to this office except those contained in these papers, and the telegram from Marshal Barlow, a copy of which was sent you in my letter of the 16th instant. The remaining papers in this office simply report the seizure and detention of the steamer. John Fallen, esq., called upon me this morning in behalf of the owners, asking that the steamer be released. I think this should be done, unless there are other facts than those known to me, and shall feel obliged if you will communicate to me your wishes and opinion in this respect to-day, before 2 o'clock p. m. Will you please return the papers inclosed when you have done with them?

Very respectfully, &c.,

W. A. FIELD,
Acting Attorney-General.

Hon. J. C. B. DAVIS,
Acting Secretary of State.

[Inclosure No 1.]

Mr. Valentine, assistant district attorney, to Mr. Field, Acting Attorney-General.

OFFICE OF UNITED STATES ATTORNEY,
[141] *EASTERN DISTRICT OF PENNSYLVANIA,
Philadelphia, August 17, 1869.

SIR: I have the honor to inclose herewith a copy of a letter from Marshal Gregory, in regard to the steamer Hornet, together with a copy of a report made to him in the case by John H. Young.

I have no personal knowledge of the facts in regard to this steamer. It is proper, however, that I should state that the marshal has acted with the utmost dispatch in the matter, and that I am well acquainted

with Mr. John H. Young, whom he called to his assistance. Mr. Young was formerly a prize commissioner, having been appointed by his honor Judge Cadwalader. He was, for many years, master of a merchant vessel, and is peculiarly well qualified to make the examination for the marshal. The vessel at present is anchored at the navy-yard, under the guns of the revenue cutter. Her detention is attended with great expense. I therefore ask for early instructions as to her disposition. The inclosed papers, together with those inclosed in my letter of yesterday, contain all the facts which have come to my knowledge.

[142] Whether there is any irregularity as to the papers of the vessel I have not been informed, but will request the collector of the port to communicate with you on the subject.

Very respectfully, &c.,

JOHN K. VALENTINE,
Assistant United States Attorney.

Hon. W. A. FIELD, *Acting Attorney-General.*

[Inclosure No. 2.]

Mr. Gregory, marshal, to Mr Smith, district attorney.

UNITED STATES MARSHAL'S OFFICE,
EASTERN DISTRICT OF PENNSYLVANIA,
Philadelphia, August 17, 1869.

SIR: In compliance with your request I herewith submit a report of the inspection of the steamer Hornet, detained by me for suspected violation of the neutrality laws of the United States. In order that the inspection might be a thorough one, I called to my assistance John H. Young, esq., a gentleman of much experience in such matters; and his report, herewith submitted, I accept as my own, and fully indorse.

I am, very respectfully, &c.,

E. M. GREGORY.
United States Marshal.

Hon. AUBREY H. SMITH.
United States District Attorney.

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[143] [Inclosure No. 3.]

Mr. Young to Marshal Gregory.

PHILADELPHIA, *August* 16, 1869.

SIR: As requested by you, the undersigned visited the steamer Hornet, now in your custody, to examine said vessel with a view to the ascertainment of anything illegal in her outfit and lading as connected with her supposed destination, Halifax, Nova Scotia and Queenstown, Ireland. In conformity with the above request, I have thoroughly examined the above-mentioned vessel in every department, and respectfully submit: First, an examination of the papers showed that her destination was Halifax, Nova Scotia, and Queenstown, Ireland: the shipping articles had the names of thirty-five officers, seamen, firemen, and coal-passers, all in the regular form; the names of the chief engineer and his two assistants, however, were not on the articles; with this addition, the crew all told are thirty-eight men.

The Hornet is about nine hundred tons burden, built of iron, side-wheels, and evidently built with a view to great speed, and is in every respect well suited for any trade where dispatch and short distance
[144] are the requisites. She is pierced for *four guns, but the fittings are of original construction, and would involve considerable expense to take them away.

She has on board two hundred and fourteen tons of coal, (receipts produced,) all in the bunkers, except about fifteen tons in bags on deck for immediate use. The engineer states her consumption at about thirty-five tons a day, and from the appearance of the fire-surface, and size of the boilers, this is in conformity with my own judgment. On this basis it would give her coal capacity for about six days' steaming. In addition to the coal there are about four cords of oak wood. The cabin, ward-room, steerage, and forecastle are fitted up in the usual manner for the accommodation of the officers and crew.

The stores are ample, but not excessive, (except in the articles of beans, of which there are twelve barrels; sugar seven barrels, and whisky twelve half-barrels) for a voyage to Halifax and Queenstown.

There are four bales of mattresses, (about forty-eight;) as the berths are fitted with those articles, the extra mattresses would seem to be superfluous.

There are four good boats, all fitted with spars, (for sails,) with boat compasses, &c. Intimation having been given that the magazine contained arms and other articles of an illegal character, an exami-
[145] nation *showed that no truth existed for such report, as they were found empty. All the store-rooms and lockers were strictly examined; the contents (stores) were such as are usually placed in those compartments.

It was further stated that the coal-bunkers contained guns and other munitions of war, but this I submit can be clearly disproved, for the reason that the bunkers are constructed with permanent iron bulkheads at each end, while the only openings are a small slide-door for the admission of coal into the fire-room, and the man-hole to each bunker on deck for putting the coal in; these openings being of small diameter, will not admit any guns but those of a small caliber. In conclusion, the examination induces me to say that, except her ability to carry coal sufficient for a voyage to Queenstown, there is no appearance of anything illegal on board the sail steamship Hornet.

Respectfully submitted.

JOHN H. YOUNG.

E. M. GREGORY, Esq.,
United States Marshal.

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[146] *Mr. Field, Acting Attorney-General, to Mr. Barlow, United States marshal.*

[Telegram.]

WASHINGTON, *August* 18, 1869.

F. C. BARLOW, Esq., *United States Marshal, New York City:*

Have you any important facts about the steamer Hornet?

W. A. FIELD.
Acting Attorney-General.

Mr. Davis, Acting Secretary of State, to Mr. Boutwell, Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, July 18, 1869.

SIR: I have the honor to inclose for your information a telegram, which has just been received from the United States marshal for the southern district of New York, and will thank you for your views upon the subject to which it relates, in order that I may reply thereto as promptly as possible.

I have the honor to be, sir, your obedient servant.

J. C. B. DAVIS,
Acting Secretary.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

[Inclosure.]

Mr. Davis, Acting Secretary of State, to Mr. Barlow, United States marshal.

[Telegram.]

147| *DEPARTMENT OF STATE,
Washington, August 18, 1869.

Mr. FRANCIS C. BARLOW, *United States Marshal, New York:*

SIR: The district attorney at Philadelphia advises that the Hornet be released. He has had an examination made, and finds no suspicious circumstances which warrant further detention. The Attorney-General recommends the same course. Have you any facts which would justify us in detaining her?

J. C. B. DAVIS,
Acting Secretary.

Mr. Barlow, United States deputy marshal, to Mr. Fish, Secretary of State.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, August 19, 1869.

SIR: Inclosed please find all the information I have relative to the Hornet. As the Attorney-General made the same request for information as the State Department, would it not be well for that officer to see the inclosed statement from our detectives?

I have the honor to be, sir, very respectfully, &c.,

S. R. BARLOW,
Deputy Marshal.

Hon. HAMILTON FISH,
Secretary of State.

[148] *[Inclosure No. 1.]

Mr. Davis to Mr. Barlow, United States marshal.

NEW YORK, *August* 19, 1869.

FRANCIS C. BARLOW, *United States Marshal, New York City:*

DEAR SIR: In regard to the seizure of the steamer Hornet at Phila delphia by the United States authorities, on the a. m. of Sunday, Augus 18, you called upon me asking what information I have regarding he being fitted out for a Cuban privateer.

On July 31, I reported to you that the Hornet was lying at the yar of Neafie & Levy, in Kensington, Philadelphia, with a large number o men on board, who were preparing her for active service. She wa formerly an English blockade-runner, and during the war was capture by the United States. I also told you on the same date that we ha information that a Captain Esling, of Philadelphia, had been talking t a Delaware Bay pilot in regard to taking a steamship out of the port o Philadelphia, and the pilot had agreed to place her outside of the ba for the sum of $500. The steamer that Captain Esling referred to, w afterward learned from the same authority, was the Hornet. O

[149] August 4, I reported *to you that we were still keeping watch o the vessel which was fitting out; that great reticence was observe as to her destination, some of the parties saying that she was intende for the California mail service, others that she was intended for th West Indies, and others that she was going to Cuba.

On August 11, we learned that one of the American officers who ha been, and is now, connected with the Cuban Junta, had said that he ha some information worth to the Junta several thousand dollars, and they did not treat him justly, he would divulge the secret. Genera Ignacio Alfaro, who has been arrested for a breach of the neutralit laws, and who is one of the Cuban Junta in this city, heard of the threat which this officer was making, and an angry altercation ensued betwe them regarding it.

On August 14, it was reported around the docks at which the Horn was lying that she would clear for Halifax, and then go to Cuba. large quantity of hard bread and canned fruits were put on board. T men at work on her would not hold any conversation with stranger Information was also obtained that the crew had been paid $

[150] *each. Some articles were put on board which were supposed be grappling hooks, but they afterward proved to be boat hoo

In the p. m. of this date the Hornet was preparing to get away. T p. m. in New York the American officer connected with the Junta, w had said on the 11th that he had valuable information, valuable to t Junta, said that Americans who were connected with the Junta h fitted out a privateer for the Cuban cause, and that she was to sa night or to morrow from Philadelphia.

Early this a. m. of the 15th, in Philadelphia, we had information t the Hornet's gangway had been enlarged and gang-planks put on boa that her engineers and crew were to number forty-two men, and that armament would be received at sea. Upon August 15, 3 a. m. of t date, men were going on board. One who went on board in a y shouted as he was going on, "Hurrah for Cuba." About 5.30 a. m. left Philadelphia, steaming down the bay. In the hurry of leavin steam-launch, 28 feet long, was left at the wharf of Neafie & Levy, the machinery for the launch was on board the Hornet. At least two five men who were shipped for the crew did not go on board, t

[151] having *been on shore drunk.

A prominent American officer connected with the Junta in this city, says that the Hornet did not intend to carry out an expedition of filibusters, but that she was intended to act as a privateer, and on account of her seizure the Junta, although not directly connected with her, will transfer their field of labor to those of open ports. That the Hornet was a private enterprise, and carried a letter of marque from Cespedes, which letter was obtained through the Cuban Junta. That her seizure has disarranged the plans of the Junta, and will retard the departure of an expedition now in progress of completion. Another prominent American officer of the Junta said yesterday that a telegram had been received by the Junta from Philadelphia, the purport of which was that any amount of security would be given for the Hornet, and members of the Junta confidently expected that she would be released to-day.

[152] The Junta, and parties connected with them in their filibustering, are very reticent, and keep their plans so much to themselves that it is very hard work to get a thorough knowledge of what they are doing. It is a moral certainty that this vessel was intended for a privateer, but it will be very difficult to get enough legal testimony to hold her. I have information from Philadelphia that General Gregory, the United States marshal at that place, has made to the State Department at Washington a full report of the seizure, and what was found on board, and I am now expecting from our superintendent in Philadelphia a report giving the names of all the parties on board, and whether they can be identified as having been connected with any filibustering expeditions in the past. Although when seized she had only five men on board, yet there were provisions enough for five hundred for a voyage of two or three weeks. As soon as I receive further information, I will speedily convey it to you.

Yours, truly,

H. W. DAVIS,
Superintendent.

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[153] **Mr. Harlow, deputy United States marshal, to Mr. Fish, Secretary of State.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK.
New York, August 19, 1869.

SIR: I have the honor to forward the following additional information relative to the Hornet, gathered by my detectives. I have telegraphed you that McNulty and DuBose, who are said to be on board the Hornet, were arrested here for a violation of the neutrality laws, and were discharged on their own recognizance.

Very respectfully,

S. R. HARLOW,
Deputy Marshal.

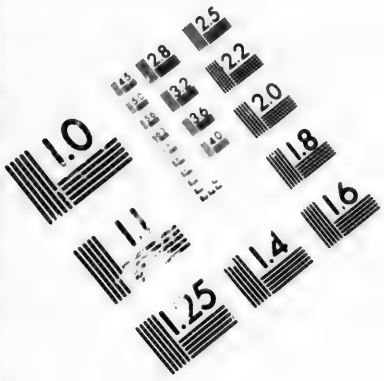
Hon. HAMILTON FISH,
Secretary of State.

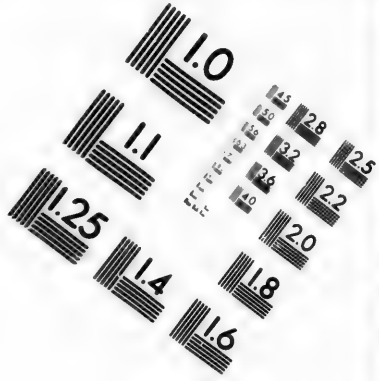
[Inclosure No. 1.]

Mr. Davies to Mr. Barlow, United States marshal.

NEW YORK, *August* 19, 1869.

DEAR SIR: Since my first report of this date, I have received information from Philadelphia that Doctors McNulty and DuBose, who were





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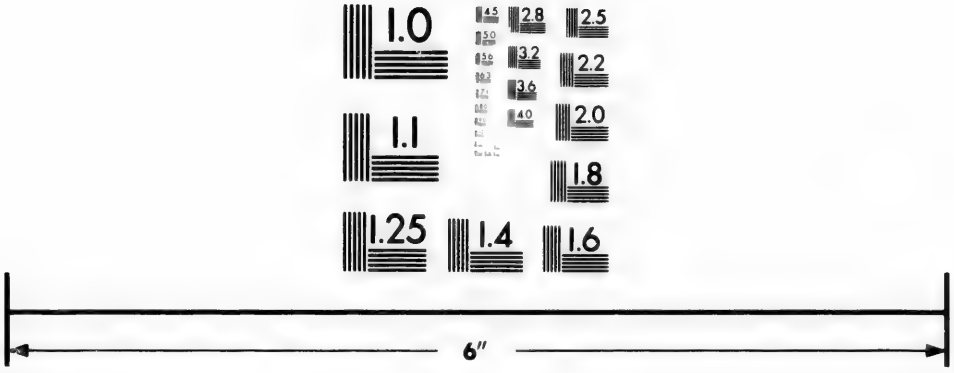

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arrested in this city for a breach of the neutrality laws, and re-
[154] leased on their own recognizance *to keep the peace of the United States, were found on board the steamer Hornet, in Philadelphia, under the assumed names of Brooks and Perkins, having been taken on board at Chester, Pennsylvania, after the ship had left Philadelphia.

There is no mistake about these men, because I have had them identified by a party who knows them well. A prominent officer of the Junta said yesterday that they were found on board, consequently I dispatched a party from here to identify them. Captain B. A. Rand, who was on board, says he is the owner of the Hornet. A dispatch was sent by Marshal Gregory from Portland to find out if the captain was responsible. The answer received from there is that he is not responsible for one dollar.

It is also ascertained that there was no bill of sale for the vessel filed at the custom-house with the Hornet papers, consequently the papers were withdrawn. After the Hornet was captured by the Government she was used for some time as a yacht for the late President Lincoln. As I informed you in my previous report, Captain Esling offered a Delaware Bay pilot $500 to take her outside the bar, leaving an impression on the pilot's mind that she was on some illegitimate business. Captain Esling was found on board in command. He is an old Philadelphia sea-captain. The pilot's name is Maull.

Yours, respectfully,

H. W. DAVIES,
Superintendent.

FRANCIS C. BARLOW, Esq.,
United States Marshal, New York.

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[115] **Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.*

LENOX, MASSACHUSETTS, *August* 19, 1869.

SIR: I have the honor to acknowledge the receipt of your telegram of yesterday, inquiring for information touching the Hornet.

I had already received a telegram from the Secretary of State asking for the same information, and had directed it to be telegraphed from New York, and, therefore, as I telegraphed you, I did not suppose you would require the information to be sent to you.

On Friday last, I telegraphed the Philadelphia marshal that the Hornet was suspected, leaving it of course to him to investigate and detain if he saw fit.

I still think that the vessel is bent upon mischief, though possibly there may not be sufficient evidence to warrant her condemnation.

However, all the facts we have are by this time before you for your decision. In regard to stopping vessels by the executive officers until the cases can be investigated by the law-officers, I have always acted on the principle that it was best to be on the safe side, and that it was better that a vessel here and there should be detained for a day or two, than that anything should escape.

Very respectfully,

FRANCIS C. BARLOW,
United States Marshal.

Hon. E. R. HOAR,
Attorney-General.

[156] *Mr. Field, Acting Attorney-General, to Mr. Davis, Acting Secretary of State.*

WASHINGTON, *August* 19, 1869.

SIR: I have the honor to transmit herewith a letter from the assistant United States attorney at Phildelphia, with an inclosure, relating to the case of the steamer Hornet, which you are requested to return when you have done with it.

Very respectfully, &c.,

W. A. FIELD,
Acting Attorney-General.

Hon. J. C. B. DAVIS,
Acting Secretary of State.

[Inclosure No. 1.]

Mr. Valentine, assistant district attorney, to Mr. Field, Acting Attorney-General.

OFFICE OF UNITED STATES ATTORNEY,
EASTERN DISTRICT OF PENNSYLVANIA,
Philadelphia, August 20, 1869.

SIR: I have the honor to inclose herewith a copy of a telegram received by Marshal Gregory.

He states that DuBose and McNulty, the parties named in the telegram, are on board of the Hornet.

Very respectfully,

JOHN K. VALENTINE,
Assistant United States Attorney.

Hon. W. A. FIELD,
Acting Attorney-General.

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[157] *[Inclosure No. 2.]

Mr. Harlow, deputy marshal, to Mr. Gregory, marshal.

NEW YORK, *August* 19, 1869.

E. M. GREGORY,
United States Marshal, 1438 *North Thirteenth street:*

DuBose and McNulty were arrested June 23 for a violation of neutrality laws, and, after remaining in jail some time, were discharged on their own recognizance.

S. R. HARLOW,
Deputy Marshal.

Mr. Hunter, Second Assistant Secretary of State, to Mr. Field, Acting Attorney-General.

DEPARTMENT OF STATE,
Washington, August 20, 1869.

DEAR SIR: In view of the doubt which may yet remain in the case of the Hornet, from the fact stated in the inclosed communications of the

19th instant from Marshal Barlow, I prefer not to take the responsibility of advising her release in advance of the arrival of Mr. Davis, who is expected to return to-night.

Very truly, yours,

W. HUNTER,
Second Assistant Secretary.

Hon. WM. A. FIELD,
Acting Attorney-General.

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[158] **Mr. Field, Acting Attorney-General, to Mr. Smith, district attorney.*

[Telegram.]

WASHINGTON, *August* 21, 1869.

A. H. SMITH, Esq., *United States Attorney, Philadelphia:*

John Fallen, esq., says that William Rand will make all desired explanations relating to the steamer Hornet. See Rand; caution him that he need make none unless he desires it, and that they may be used against him. Then take down all he chooses to say, and send here. The Hornet must not be released, except on the order of the head of a Department, and the marshal will put her in the custody of the Navy Department whenever a naval officer is authorized to receive her. Show this to the marshal.

W. A. FIELD,
Acting Attorney-General.

Mr. Davis, Acting Secretary of State, to Mr. Barlow, United States marshal.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 29, 1869.

FRANCIS C. BARLOW, *United States Marshal, New York:*

Your letter is received. The Attorney-General will instruct you to continue observations, with directions, and will secure for you
[159] further use of *revenue-cutter and naval force, so far as possible. You must prevent any filibustering expedition from leaving, or from joining the Hornet, which you report as outside. The Attorney-General will give you special instructions on the points.

J. C. B. DAVIS,
Acting Secretary.

Mr. Hoar, Attorney-General, to Mr. Barlow, United States marshal.

WASHINGTON, *September* 29, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of yesterday, relating to expeditions for Cuba in violation of the neutrality laws, and of your telegram this morning respecting the steamer Hornet.

While the steamer Hornet is on the high seas, not having left our ports unlawfully, I can see no authority in law for seizing her, unless she is an armed piratical vessel, and we have no duty respecting her different from that which belongs to all civilized governments. Until further evidence or information is received concerning her, I do not see that we are called upon to employ the naval force of the United States in arresting or detaining her. But it is our duty under the neutrality laws to prevent, if possible, the departure of any expedition from this country of a hostile character against a nation with which we are at peace.

[160] *I therefore desire that you shall do all in your power to prevent any such expedition joining the Hornet, or in any manner violating the laws of the country, and you are authorized to employ a revenue-cutter whenever, in your judgment, it shall be necessary to accomplish that object. The Secretary of the Treasury informs me that he has given orders to furnish a revenue-cutter whenever you apply for it for that purpose.

Very respectfully,

E. R. HOAR,
Attorney-General.

FRANCIS C. BARLOW, Esq., *United States Marshal, New York City.*

Mr. Barlow, United States marshal, to Mr. Hoar, Attorney-General.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF NEW YORK,
New York, October 1, 1869.

SIR: I have the honor to acknowledge the receipt of your telegram of September 29, informing me that the Secretary of the Treasury has placed a cutter at my disposal when I call for it.

There are various rumors to the effect that the Hornet is outside; also, that supplies and some men had joined her at sundry times. If she is there, I have no doubt that these last rumors are well founded.

[161] *A large vessel being off the port, it is impossible to prevent schooners and small boats from conveying coal, guns, and a few men in their holds, and getting out. There are three ways of getting out—Hell Gate, the Narrows, and the Kills—and the thing when carried out in this small way cannot be stopped. The only way is to clear off the coast the vessels lying in wait.

It is also rumored that on Saturday night last a large number of men went out as an expedition. I have no reason to believe that this story is true; but there was nothing to prevent it.

On Saturday last all the revenue-cutters were withdrawn from under my orders and removed from their stations in the harbor without any information to me of the fact.

I only accidentally found it out, and the harbor has since that time been free from cutters and detectives to stop anything.

If the Hornet comes into our waters, and there takes on board coal, guns, ammunition, crew, or stores to assist in her fitting out as a privateer, I understand her action to be within the third section of the neutrality act, and illegal. And if I find that she has done or is doing these, I shall detain her, unless otherwise ordered by you.

[162] The district attorney agrees with me in this in*terpretation of the law.

On any other theory, a vessel might leave the English ports wholly innocent in her condition, and take on board all her armament and supplies in our harbor without violating our neutrality act.

I suppose the Enterpe will sail to day. I should not have made any question of her, and should have allowed her to sail quietly, (as long as she must sail,) had I not supposed she was laden with guns for the Hornet.

Paulding, Kemble & Co. had not notified me that the guns were going in her, and I at first suspected they were for the Cubans.

I have just sent the revenue-cutter Seward to look up the Hornet, with instructions that if she is found anywhere within three miles of our coast, that she shall be detained if she *is* or *has been* engaged in receiving from American ports arms, men, guns, stores, or supplies.

If she has received *any part* of her "*furnishing or fitting out*" in our waters, I think she is liable to seizure under section three of the neutrality act, even though you do not find her within our waters; but the district attorney thinks she had better not be touched, unless we find her within a marine league, and therefore I have so ordered.

Very respectfully,

FRANCIS C. BARLOW,
United States Marshal.

Hon. E. R. HOAR,
Attorney-General, Washington.

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[163] *Warrant for the arrest of the Hornet.*

UNITED STATES OF AMERICA,
State of North Carolina:

To the United States marshal for the district of North Carolina, or his lawful deputy:

Whereas information, upon oath, has been made by Denard Rumley to me, Allen Rutherford, United States commissioner, that the steamer Lady Sterling, *alias* Hornet and Cuba, or by whatever name called, has been fitted out and armed within the limits of the United States, and is now engaged in taking in coal and supplies in the Cape Fear River, at or near Smithville, North Carolina, for the purpose and with intent to commit hostilities against the subjects and property of Spain, with whom the United States are at peace, and particularly that the said steamer, her officers and crew, are fitted out, armed, and organized with intent to commit hostilities against the people and property of the island of Cuba in said island and upon the high seas, as a privateer;

These are, therefore, to command you, in the name of the President of the United States, to summon such force as may be necessary, and to seize, arrest, and detain in your custody the steamer Lady Sterling, *alias* Hornet and Cuba, or by whatever name called, so that you have it, and there before me to answer the charge of violating section 3 of the neutrality laws of the United States approved April 20, 1818, within the time prescribed by at Wilmington, in the State of North Carolina. Herein fail not.

Given under my hand and seal the 4th day of October, 1869.

ALLEN RUTHERFORD,
United States Commissioner, District of North Carolina.

[164] *Mr. Hartley, Acting Secretary of the Treasury, to General Sherman, Acting Secretary of War.*

TREASURY DEPARTMENT,
Washington, October 4, 1869.

SIR: I have the honor to transmit herewith, for your information, copy of a telegram received at this Department from D. Rumley, collector of customs at Wilmington, North Carolina, under date of 3d instant, reporting arrival of steamer Lady Sterling, *alias* Hornet, at Smithville, mouth of Cape Fear River, for the purpose of obtaining coal and provisions; also, copy of a telegram from this Department to that officer, under same date.

I am, very respectfully,

J. F. HARTLEY,
Acting Secretary of the Treasury.

Hon. WILLIAM T. SHERMAN,
Acting Secretary of War.

[Inclosure.]

Mr. Rumley, collector, to Mr. Boutwell, Secretary of Treasury.

[Telegram.]

WILMINGTON, NORTH CAROLINA, *October* 3, 1869.

To Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury:

The steamer Lady Sterling, *alias* Hornet, with one hundred and sixty men and officers, and eight guns, is at Smithville, mouth of the [165] Cape Fear River, touching there for coal *and provisions. Officer of customs boarded for papers and they produced only commission of Cuban government. She is lying under Fort Caswell, and, with the aid of the garrison at Fort Johnson, she can be stopped.

I await your instructions.

D. RUMLEY,
Collector.

Mr. Hartley, Acting Secretary of the Treasury, to General Sherman, Acting Secretary of War.

TREASURY DEPARTMENT,
Washington, October 4, 1869.

SIR: I have the honor to transmit herewith a copy of telegram received from Collector Rumley, at Wilmington, North Carolina, giving additional information regarding steamer Lady Sterling, and requesting that the requisite authority be given the marshal for obtaining cooperation of the military in the case.

I have to request that this authority be granted, or such order issued as may be deemed necessary to secure the detention of the vessel in question.

I am, very respectfully,

J. F. HARTLEY,
Acting Secretary of the Treasury.

Hon. W. T. SHERMAN,
Acting Secretary of War.

[166] *[Inclosure No. 1.]

Mr. Rumley, collector, to Mr. Boutwell, Secretary of the Treasury.

[Telegram.]

WILMINGTON, NORTH CAROLINA, *October* 4, 1869.

To Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury:

Assistant Adjutant-General J. W. Taylor, at Atlanta, telegraphs to Lieutenant-Colonel R. T. Frank, in command of troops at Smithville, that the marshal must apply to the authorities at Washington before he can assist him in detaining the Lady Sterling. Marshal, with part customs force, left early this morning for Smithville. The requisite authority, on behalf of the marshal, is respectfully requested.

D. RUMLEY,
Collector.

Mr. Boutwell, Secretary of the Treasury, to General Sherman, Acting Secretary of War.

TREASURY DEPARTMENT,
Washington, October 4, 1869.

SIR: I get information from the collector of customs at Wilmington, North Carolina, that there is danger that the Hornet may go to sea in defiance of our authority.

I have directed the collector to take precautions to prevent this, and I have the honor to request you to issue further orders, if you deem it necessary, to the military officers, to assist in preventing her escape.

[167] *Very respectfully,

GEO. S. BOUTWELL,
Secretary.

General W. T. SHERMAN,
Acting Secretary of War.

General Sherman, Acting Secretary of War, to commanding officer.

WASHINGTON, *October* 4, 1869.

To COMMANDING OFFICER,
Fort Johnson, via Wilmington, North Carolina:

Use your entire force to detain the steamer Lady Sterling, *alias* Hornet, till she is furnished a regular clearance by the collector of the port.

W. T. SHERMAN,
General, and Acting Secretary of War.

General Sherman, Acting Secretary of War, to Mr. Rumley, collector.

[Telegram.]

WASHINGTON, *October* 4, 1869.

D. RUMLEY, *Collector, Wilmington, North Carolina:*

Notify commanding officer at Fort Johnson that he is ordered, by telegraph, to detain the Hornet till she receives from you a regular clearance.

W. T. SHERMAN,
General, and Acting Secretary of War.

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[168] **Adjutant-General Kelton to General Terry.*

[Telegram.]

ADJUTANT-GENERAL'S OFFICE,
Washington, October 5, 1869.

Brevet Major-General A. H. TERRY,
Commanding Department of the South, Atlanta, Georgia:

The Secretary of War directs that you instruct, by telegraph, the commanding officers of the troops about the mouth of the Cape Fear River to aid the United States marshal to detain the steamer Lady Sterling, *alias* Hornet.

J. C. KELTON,
Assistant Adjutant-General.

Mr. Boutwell, Secretary of the Treasury, to Mr. Rumley, collector.

[Telegram.]

TREASURY DEPARTMENT,
Washington, October 5, 1869.

D. RUMLEY, *Collector of Customs, Wilmington, North Carolina:*

Your course in the case of the Hornet is approved. Who is retained as counsel? You will hold the Hornet, under the eleventh section of the act of 1818, until directed by the President to release her.

GEO. S. BOUTWELL,
Secretary, &c.

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[169] **Mr. Boutwell, Secretary of the Treasury, to Mr. Rumley, collector.*

TREASURY DEPARTMENT,
Washington, October 5, 1869.

SIR: I telegraphed you to-day that your conduct in the case of the Lady Sterling, *alias* Hornet, was approved by the Department. I also directed you to hold the steamer, under the eleventh section of the act of 1818, until you are directed by the President to release her. This you will do without reference to the action of the commissioner in the case now pending.

The Attorney-General will communicate with the district attorney, and also with the special counsel, who has been employed by you, as I understand from your dispatch of the 4th instant, received to-day.

The legal proceedings for the purpose of ascertaining the character of the vessel will be probably conducted by the Attorney-General, through the district attorney and counsel associated with him.

I desire you, however, to keep me advised, either by letter or telegraph, of the progress of proceedings, and of any facts which you may deem important to a proper understanding of the case by the President.

Very respectfully,

GEO. S. BOUTWELL,
Secretary.

D. RUMLEY, Esq.,
Collector of Customs, Wilmington, North Carolina.

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170 **Mr. Barlow, United States marshal, to Mr. Fish, Secretary of State.*

[Telegram.]

NEW YORK, *October* 7, 1869.

SECRETARY OF STATE:

I get rumor that Hornet will run out of Wilmington, in defiance of the United States authorities.

FRANCIS C. BARLOW.

Mr. Hoar, Attorney-General, to Mr. Starbuck, district attorney.

WASHINGTON, *October* 6, 1869.

SIR: The steamer Hornet, which is now detained at the port of Wilmington, presents a case to which I wish to bring your attention. I understand that some proceedings have been commenced before a United States commissioner, and that Judges Parson and French have appeared on behalf of the Government.

From what is reported of the case, it would seem to me that evidence sufficient to convict the officers of the vessel and a considerable part of the men, under the fourth section of the act of April 20, 1818, might be found, and probably against some of them under the sixth section of the same statute, and that evidence for the purpose might be obtained by proper exertion from persons on board the vessel. It is desirable that you should attend to the case, and take all proper measures, upon such facts as you can ascertain, to pre-
[171] vent the departure of the *vessel upon a hostile expedition by libeling the vessel, or prosecuting the officers and men belonging to her, or both, as the facts, when investigated, may seem to warrant.

Very respectfully,

E. R. HOAR,
Attorney-General.

DARIUS H. STARBUCK, Esq.,
United States Attorney, Salem, North Carolina.

Mr. Porter, for Secretary of the Navy, to Mr. Fish, Secretary of State.

NAVY DEPARTMENT,
Washington, October 7, 1869.

SIR: I have the honor to acknowledge the receipt of your three letters, two of the 4th, and the other of the 5th instant, inclosing copies of communications from General F. C. Barlow, United States marshal at New York, relative to the movements of hostile expeditions.

Very respectfully,

DAVID D. PORTER,
For Secretary of the Navy.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Rumley, collector, to Mr. Boutwell, Secretary of the Treasury.

[Telegram.]

WILMINGTON, NORTH CAROLINA,
October 7, 1869.

Hon. GEO. S. BOUTWELL, *Secretary of Treasury:*

[172] Should I fail to make good the allegation against the Lady Sterling on Monday next, I fear an attempt will *be made to escape and put to sea. The captain is unwilling for me to place an officer on board, and the force at my command is entirely inadequate to thwart any movement of that kind. Can you furnish me with an armed cutter at once?

D. RUMLEY,
Collector.

Mr. Boutwell, Secretary of the Treasury, to Mr. Robb, collector.

[Telegram.]

TREASURY DEPARTMENT,
Washington, D. C., October 7, 1869.

THOMAS P. ROBB, *Collector of Customs, Savannah, Georgia:*

Send McCulloch to Wilmington, North Carolina, immediately. Let Captain Merryman go.

Report to Collector Rumley. Nansemond left yesterday.

GEO. S. BOUTWELL,
Secretary of Treasury.

Mr. Boutwell, Secretary of the Treasury, to Mr. Rumley, collector.

[Telegram.]

TREASURY DEPARTMENT,
Washington, D. C., October 7, 1869.

D. RUMLEY, *Collector of Customs, Wilmington, North Carolina:*

[173] I have ordered the steam revenue-cutter McCulloch, at *Savannah, to proceed to Wilmington, and report to you for orders.

GEO. S. BOUTWELL,
Secretary of Treasury.

Mr. Boutwell, Secretary of the Treasury, to Mr. Rumley, collector.

[Telegram.]

TREASURY DEPARTMENT,
Washington, October 7, 1869.

D. RUMLEY, *Wilmington, North Carolina:*

War Department has issued orders to Army officers at the fort to assist you. Bring the Hornet under guns of fort. Take such possession of her, and, if necessary, so far dismantle her as to make it impossible for her to go to sea, until you have orders to release her.

GEO. S. BOUTWELL,
Secretary of Treasury.

Mr. Porter, Vice-Admiral, to the President.

NAVY DEPARTMENT,
Washington, October 7, 1869.

SIR: The inclosed telegrams have been sent in different directions.

I have the honor to be, very respectfully,

DAVID D. PORTER,
Vice-Admiral.

The PRESIDENT.

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[174] *[Inclosure No. 1.]

Vice-Admiral Porter to Rear-Admiral Stringham.

[Telegram.]

NAVY DEPARTMENT,
Washington, October 7, 1869.

Rear-Admiral S. H. STRINGHAM,
109 *Hicks street, Brooklyn, New York:*

The following has been sent to Admiral Godon. Reiterate the orders, and expedite the vessel.

Throw fifty men on board the Frolic without delay. Send your best tugs to tow her out while she is getting up steam. Order the commander to proceed to Smithfield, Cape Fear River, or wherever the Cuban steamer Cuba is lying, take his position alongside of her, and sink her if she attempts to leave. Also keep up steam, prepared to follow her. The Frolic must leave to-night. Put on board charts and instruments when you put the men. Don't fail. If she wants ammunition, put it on board to-night. See if the vessel can't get off before 8 o'clock. If the Frolic has sufficient number of men on board, there is no necessity for increasing the crew.

Men can be taken temporarily from the Severn.

By order of the President.

D. D. PORTER,
Vice-Admiral.

[Inclosure No. 2.]

Vice-Admiral Porter to commanding officer at Key West.

[Telegram.]

NAVY DEPARTMENT.

[175] * *Washington, October 7, 1869.*

Dispatch the fastest vessel you have without delay to Cape Fear River, North Carolina, to prevent the steamer Cuba from going to sea. Sink her if the captain refuses to obey your orders.

D. D. PORTER,
Vice-Admiral.

COMMANDING OFFICER
United States Naval Forces, Key West, Florida.

[Inclosure No. 3.—Telegram.]

NAVY DEPARTMENT.
Washington, October 7, 1869.

Rear-Admiral S. W. GODON,
Commanding Navy-Yard, New York.

Throw fifty men on board the Frolic without delay. Send your best tugs to tow her out while she is getting up steam. Order the commander to proceed to Smithville, Cape Fear River, or wherever the Cuban steamer Cuba is lying, take his position alongside of her and sink her if she attempts to leave; also keep steam up, prepared to follow her.

The Frolic must leave to night. Put on board charts and instruments, when you put the men; don't fail. If she wants ammunition, put it on board to-night. See if the vessel can't get off before 8 o'clock. If the Frolic has sufficient number of men on board, there is no necessity for increasing the crew. Men can be taken temporarily from the Severn.

By order of the President.

D. D. PORTER,
Vice-Admiral.

[176] * *Vice-Admiral Porter to the President.*

NAVY DEPARTMENT.
Washington, October 8, 1869.

SIR: I have the honor to send herewith a copy of a telegram received this a. m. from Rear-Admiral Godon, commanding navy-yard, New York, dated 7th instant, and copies of two telegrams from Commander Queen, senior officer at Key West.

Very respectfully, your obedient servant,

DAVID D. PORTER,
Vice-Admiral.

The PRESIDENT.

[Inclosure No. 1.]

Rear-Admiral Godon to Vice-Admiral Porter, Acting Secretary of Navy

[Telegram.]

BROOKLYN, NEW YORK, *October* 7, 1869.

TO SECRETARY OF THE NAVY:

Telegram received. The Frolic will sail by 8 o'clock,

S. W. GODON,
Rear-Admiral.

[Inclosure No. 2.]

Commander Queen to Mr. Robeson, Secretary of the Navy.

[Telegram.]

UNITED STATES STEAMER TUSCARORA,
Key West, Florida, October 7, 1869.

[177] *Hon. GEO. M. ROBESON:

Telegram received. No vessel to send. Tuscarora and Saugus only vessels here. Tuscarora cannot move before Monday on account of bursting of main steam-pipe.

W. W. QUEEN,
Commander and Senior Officer.

Vice-Admiral Porter to the President.

NAVY DEPARTMENT,
Washington, October 8, 1869.

SIR: I have the honor to send you a copy of a telegram just received (1.20 p. m.) from Rear-Admiral Godon, stating that the Frolic left the Battery, New York, at 8 p. m. yesterday.

Very respectfully, your obedient servant,

DAVID D. PORTER,
Vice-Admiral.

The PRESIDENT.

[Inclosure.]

Rear-Admiral Godon to Mr. Robeson, Secretary of the Navy.

[Telegram.]

BROOKLYN, NEW YORK, *October* 8, 1869.

TO HON. GEO. M. ROBESON, *Secretary Navy*:

Frolic left the Battery last night at 8 o'clock p. m.

S. W. GODON,
Commandant.

[178] *Messrs. Parson and French, attorneys for United States, to Mr. Hoar, Attorney-General.*

[Telegram.]

WILMINGTON, NORTH CAROLINA, *October* 11, 1869.

HON. E. R. HOAR, *Attorney-General:*

Case postponed until next Saturday. Have witnesses here the day before to prove the necessary facts, especially the intent. We wish to know and prove who were on board at Philadelphia, the then condition of the vessel when she sailed, for what port, and her cargo, if any; the proceedings at Halifax and her history there; how and when armed, when and whence Gordon deserted—they say the night the Cuba came in. He can't be found. Send all papers, as well as witnesses, material to sustain the particular charge or any other breach of the neutrality laws. Keep us advised.

PARSON & FRENCH,
Attorneys for United States.

Mr. Starbuck, district attorney, to Mr. Hoar, Attorney-General.

OFFICE OF UNITED STATES ATTORNEY.
Salem, North Carolina, October 11, 1869.

SIR: I have the honor to acknowledge the receipt of your letter concerning the steamer Hornet, detained in the port of Wilmington,
[179] *and the case will soon undergo an investigation before the United States commissioner, which I trust will develop the true character of the vessel; then such proceedings will be instituted as the facts may warrant.

I am, sir, very respectfully,

D. H. STARBUCK,
United States Attorney.

Hon. E. R. HOAR,
Attorney-General.

Messrs. Parson & French, attorneys for the United States, to Mr. Hoar, Attorney-General.

[Telegram.]

WILMINGTON, NORTH CAROLINA, *October* 9, 1869.

Hon. E. R. HOAR, *Attorney-General:*

District attorney is not here. There is no telegraph. Mr. Hall should be here, we think.

PARSON & FRENCH.

Messrs. Parson & French, attorneys for United States, to Mr. Hoar, Attorney-General.

[Telegram.]

WILMINGTON, N. C., *October* 12, 1869.

E. R. HOAR, *Attorney-General:*

Have not libelled the Hornet, but are holding her officers under warrant. Shall we file libel?

[180] *PARSON & FRENCH,
Attorneys for United States.

Mr. Fish, Secretary of State, to Mr. Hoar, Attorney-General.

DEPARTMENT OF STATE,
Washington, October 12, 1869.

SIR: I have had a conversation with the Spanish minister, Mr. Roberts, to-day, in reference to the legal proceedings which are to take place on Friday next, at Wilmington, in the case of the Hornet. He thinks it important, and is desirous that Mr. Phelps, the first assistant of Mr. Pierrepont, United States district attorney at New York, should be present on the occasion.

I submit the matter for your consideration.

I have the honor to be, sir, your very obedient servant,

HAMILTON FISH,
Secretary of State.

Hon. E. R. HOAR,
Attorney-General.

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[181] **Mr. Phelps, assistant district attorney, to Mr. Hoar, Attorney-General.*

WILMINGTON, *October* 20, 1869.

SIR: A libel for the condemnation of the steamer Hornet, otherwise called the Cuba, was filed in the district court on Monday, the 18th instant, and the monition issued early in the forenoon of that day and placed in the hands of the deputy marshal for service.

For reasons of his own he did not attempt the execution of this process until yesterday, when, in company with the collector of this port, he boarded the steamer, and the commander, Mr. Higgins, being sent for, the marshal demanded possession of the vessel, exibiting his monition. Higgins refused to deliver his vessel to any other authority than that of the President of the United States, in the person of a military or naval officer. The deputy marshal thereupon called on the commander of the United States steamer Frolic, who sent his executive officer on board, to whom Mr. Higgins surrendered his ship, which was then turned over to the deputy marshal, who has since retained custody of the same. Immediately thereafter Captain Higgins called on me and requested me to instruct the marshal to allow the men to re-

[182] main on board, assigning as a reason therefor, *that if they were put ashore they would disperse, and then, in the event of the release of the vessel, of which he felt confident, it would be impossible for him to ship another crew here without violating the law, and thus the vessel would be lost to Cuba.

Mr. Pearson and myself, after consultation, replied to Captain Higgins, through his counsel Mr. Davis, declining to accede to his request, and informing him frankly at the same time that it was the intention of the Government that his vessel should not go to sea in the service of Cuba. The men were, therefore, put ashore, and are still here in the city. One of them was unfortunately killed last night by falling from a window.

There are no new developments in the matter of the prosecution against the officers, which will proceed to-morrow unless some further postponement is obtained by the defense.

Very respectfully, yours, &c.,

BENJ. K. PHELPS.

Hon E. R. HOAR, *Attorney-General.*

Mr. Hoar, Attorney-General, to Mr. Phelps, assistant district attorney.

WASHINGTON, *October* 30, 1869.

SIR: Your letters and telegrams have been received to this date.

[183] *I do not understand how Captain Higgins has managed to escape, but shall probably learn, and have no doubts that it was without any responsibility on your part. I wrote you to continue to attend to the prosecution of the libel against the Hornet, until you are satisfied that the progress of the case is such that it can be left safely to the charge of the district attorney. I wish you to impress upon him, when he comes to Wilmington, the importance that the Government attaches to the case and the necessity for active and faithful attention to it on his part.

His omission to give such attention thus far has been a source of some anxiety and regret. Whether there has been sufficient reason for it I do not now attempt to decide.

I also wish the marshal to understand, and I wish you would impress upon him, that we expect him, either personally or by a competent deputy, to have whatever is necessary done in regard to the custody of the prisoners and the holding of the vessel; that no such nonsense as the newspapers state was suffered by his deputy to take place in regard to the surrender of Captain Higgins is to be repeated, and that representations have been made to me in regard to the relations of his deputy to the crew of the Hornet, which I was very sorry to receive.

[184] *I trust that your necessary detention at Wilmington will not be a source of personal inconvenience.

Very respectfully, yours,

E. R. HOAR,
Attorney-General.

BENJ. K. PHELPS, Esq.,
Assistant United States Attorney, Wilmington, North Carolina.

Mr. Carron, United States marshal, to Mr. Hoar, Attorney-General.

WILMINGTON, NORTH CAROLINA, *November* 5, 1869.

SIR: Your telegram dated October 18 ultimo, requesting my personal attention in the case of the Cuban man-of-war at this city, was received

by me while I was in attendance upon the United States district court then in session at Edenton, North Carolina. The telegram was forwarded to me by mail from New Berne, North Carolina, October 21. I went immediately to Wilmington, traveling more than one hundred miles before I could reach the railroad. Passing Goldsborough on the 22d, I replied to yours of the 18th, and on reaching Wilmington called on Mr. B. K. Phelps for instructions, as you directed. Upon my arrival I found the steamer lying near the wharf and in charge of my deputy, Joseph H. Neff, who had dismantled her, and rendered her unable to go to sea. I proceeded to discharge the vessel, and took from her a considerable quantity of material, and on arriving with them, I
[185] expected to meet Collector Rumley or his deputy to *take charge of them in the custom-house warehouse, but to my astonishment I found neither. I deposited, however, this cargo in the warehouse without being able to get any receipt for them. I then declined to discharge any more goods from the vessel, as I considered them safe where they were with ship-keepers on board. Mr. Phelps also thought this the best course.

The collector, Rumley, complained that the men Deputy Neff had on board were not trustworthy. I asked him then to put an honest man on board as watchman of the vessel. He did so, and a few nights thereafter this same man was detected in abstracting the stores to the amount of several hundred dollars' worth, which were all captured by Deputy Neff's detectives and are in safe keeping.

From a full investigation of the whole matter it is my opinion that, with the exception of the theft mentioned, the complaints in regard to the management of the case are without just foundation.

So far as my action or that of my subordinates is concerned, we shun not the strictest scrutiny.

To conclude, if I may be allowed to express the opinion, would state that the seizure of the vessel and trial of the officers have been conducted as well as could be under the circumstances, little petty
[186] mis*representations to the contrary notwithstanding.

Instructions from your office to me shall always receive prompt attention, and it will afford me pleasure to hear from you at any time.

I remain yours, &c., &c.,

S. F. CARRON,
United States Marshal.

Hon. E. R. HOAR,
United States Attorney-General.

Mr. Phelps, assistant district attorney, to Mr. Hoar, Attorney-General.

OFFICE OF THE DISTRICT ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, November 22, 1869.

SIR: I have received to-day from the counsel of the collector in Wilmington the letter and notice, of which copies are inclosed.

It seems to me that the motion to bond should be opposed. But I deem it still more important that, if the claim shall be filed in the name of the "republic of Cuba," a motion should be made at once to strike it out.

I am engaged in the preparation of some amendments to the libel

against the Hornet, which will include counts under the piracy act of August 5, 1861.

If the district attorney of North Carolina is intrusted with the [187] charge of this matter, *permit me to suggest that his unfamiliarity with the proceedings of this nature will render it necessary to send him very explicit instructions as to the law and the practice. The court should not be permitted, I think, to entertain a plea filed by the "republic of Cuba," which can have no standing in our courts until recognized by the Government. Certainly the Government should oppose vigorously the assertion of any such claim.

If the Government desire any further information or service from me in regard to this motion to bond or the filing of the claim, both of which, as you will perceive, will come up on Monday, the 29th instant, may I ask to be advised as early as practicable.

If there is a trial it will be, I am informed, on the 20th of December at Raleigh.

If a claim is made in the name of the "republic of Cuba," and is properly opposed, it seems quite possible that the expenses of a trial may be avoided.

With great respect, yours, &c.,

BENJ. K. PHELPS.

Hon. E. R. HOAR, *Attorney-General.*

Mr. Field, Assistant Attorney-General, to Mr. Phelps, assistant district attorney.

DEPARTMENT OF JUSTICE,
Washington, November 23, 1869.

[188] *[Telegram.]

BENJ. K. PHELPS,
Assistant United States Attorney, New York City:

Go to Raleigh; oppose bonding of steamer Hornet and all recognition by the court of any "republic of Cuba."

W. A. FIELD,
Assistant Attorney-General.

... Phelps, assistant district attorney, to Mr. Hoar, Attorney-General.

RALEIGH, *November* 29, 1869.

SIR: I have the honor to report that, upon the return of the process this day in the United States district court in the case of the United States *vs.* the steamship Hornet, &c., Messrs. Davis and Mears appeared and filed a claim, alleging ownership of the vessel in the republic of Cuba, the claim being made and verified by J. Morales Lemus, as agent for said republic. I moved, on behalf of the United States, to strike out this claim upon the ground that the republic of Cuba, not having been recognized by the political departments of the Government or either of them, had no standing in any of the courts of the United States, citing in support of that position the following authorities:

(8th Danas) Ed. Wheaton, Internat. Law, pp. 33, 36, 41, and
[189] others; United States *vs.* Palmer, 3 Wh., 610; the *Divina Pastora, 4 Wh., 52; United States *vs.* Hutchings, 2 Wheeler's Crim. Cases, 543; United States *vs.* Baker, 5 Blatchf. Cir. Ct. R. The argument was concluded by George Davis, esq., for the claimants, and by myself for the United States.

The former cited Stoughton *vs.* Taylor, 2 Paine C. C. R., 652; Srisuni *vs.* Clement, 2 Carr and Payne, 223; also, Gelston *vs.* Hoyt.

The argument continued the whole day, and the judge announced that he would render his decision as soon as he could complete his examination of the case.

I am, sir, very respectfully, yours, &c.,

BENJ. K. PHELPS.

Hon. E. R. HOAR, *Attorney-General.*

Mr. Starbuck, district attorney, to Mr. Hoar, Attorney-General.

OFFICE OF THE UNITED STATES ATTORNEY,
Salem, North Carolina, December 30, 1869.

SIR: The United States circuit court at Raleigh has just closed its session of about four weeks. I filed a petition and obtained thereon an order for the sale of the perishable portion of the property found on board the steamship Hornet, *alias* Cuba, consisting of ship-stores, the furniture of the vessel, and a large quanity of gunpowder. This became necessary to save the property from the damage which must
[190] ensue by next June *term, to which the case of the Hornet comes up by appeal, as you have doubtless ere this been informed by Mr. Phelps, the assistant district attorney in this case.

This property will be sold and the proceeds held by the marshal subject to the final decision of the case, which will probably be made at June term, 1870, of this court.

I am, sir, very respectfully, yours, &c.,

D. H. STARBUCK,
United States Attorney.

Hon. E. R. HOAR, *Attorney-General.*

Mr. Macias to the President.

NEW YORK CITY, *June* 1, 1870.

SIR: The undersigned, Mr. Fernando Macias, merchant, resident in New York, and a naturalized citizen of the United States, respectfully calls your attention to the case of the steamship Cuba, commonly known as the Hornet, now pending in the United States district court for the district of North Carolina, and requests the discontinuance of proceedings against the vessel, and her cargo, tackle, and apparel, and her delivery to the undersigned.

The Hornet was purchased by the undersigned in July, 1869,
[191] of the United States Navy Depart*ment for the sum of about $33,000, and is now under seizure, together with the cargo, apparel, and tackle, at Wilmington, and libelled for forfeiture of the alleged violation of the neutrality laws of the United States for the purpose of committing hostilities against Spain. The facts in the case are well known. Whatever may be its legal merits, the undersigned has the confidence to be-

lieve that it is only the desire of the Government of the United States to enforce the laws, prevent their violation, and not to enrich the public treasury by harsh forfeitures. The voyage of the Cuba has been broken up, and all possibility of its being renewed has passed. The undersigned desires to regain possession of the vessel and to dispose of her for commercial purposes. He is willing to enter into any engagement that may be acceptable to the Government that the vessel shall not be used to commit hostilities against Spain, nor to violate in any manner the laws of the United States.

Trusting that the Government will magnanimously discontinue the proceedings against the vessel and cargo, and order the delivery of the property libelled to the undersigned as requested,

I have the honor to be, yours, &c.,

FERNANDO MACIAS.

[192] *By his attorney in fact,
WM. E. CHANDLER.

The PRESIDENT.

Mr. Hoar, Attorney-General, to Mr. Fish, Secretary of State.

ATTORNEY-GENERAL'S OFFICE,
Washington, June 11, 1870.

SIR: I have the honor to inclose a copy of the instructions which have to-day been sent to the district attorney of North Carolina, in relation to the settlement of the case of the Hornet, or Cuba, and which are, I believe, in conformity with the wishes of the President, as communicated by you to me. I inclose with them the bond which has been given by the claimant of the vessel as a condition of the settlement, and a check for twenty-five hundred dollars paid by the claimant in settlement of such of the expenses incurred by the United States in relation to the witnesses, &c., as it has been agreed he should pay.

Very respectfully,

E. R. HOAR,
Attorney-General.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Hoar, Attorney-General, to Mr. Starbuck, district attorney.

[Inclosure.]

ATTORNEY-GENERAL'S OFFICE,
Washington, June 11, 1870.

[193] *DARIUS H. STARBUCK, Esq.,
United States Attorney, Raleigh, North Carolina:

SIR: Mr. Fernando Macias has applied for the release of the Hornet, otherwise called the Cuba, now in the possession of the United States marshal, and has given bond, with sufficient sureties, in the sum of $50,000, that such steamer shall not be used in any manner in violation of the neutrality laws of the United States. It has thereupon been agreed that the pending proceeding shall be disposed of in the following manner: The appeal taken from the district to the circuit court by counsel representing what they call the "republic of Cuba," or Mr. Lemus shall waive and withdraw that appeal and consent to an

order in the circuit court dismissing the same, and shall withdraw their claim and appearance in the district court; and the said Macias may appear as claimant in his own right of the vessel, tackle, apparel, and cargo; that he shall thereupon file a certificate of probable cause of seizure, and thereupon you are to discontinue all further proceedings against the said vessel under the libel in the district court, and consent to an order delivering the same to the said Macias, the claimant, and for payment to him of all moneys received by the marshal for sales
[194] of any part of the property *heretofore made by order or license of court. The marshal is to pay over the whole proceeds of sales, and will settle his account for fees and disbursements in the ordinary manner, where the libel is dismissed and the property discharged.

You are instructed to carry this arrangement into immediate effect without delay, if possible, on the day on which you receive this letter, and papers suitable for execution to carry into effect these instructions are inclosed herewith.

Very respectfully,

E. R. HOAR,
Attorney-General.

Mr. Fish, Secretary of State, to Mr. Davis, district attorney.

[Telegram.]

DEPARTMENT OF STATE,
Washington, October 6, 1870.

NOAH DAVIS, *United States Attorney, New York:*

The Spanish minister alleges that the steamer Hornet is about to sail from New York on an unlawful and piratical cruise with intent to make war against Spain, and in violation of the neutrality laws. You will please take immediate steps to investigate the case, and will see that no violation of the neutrality laws of the United States be per-
[195] mitted, and that the vessel *be not allowed to depart on any unlawful cruise.

HAMILTON FISH.

Memoranda.

After the receipt of the above telegram, the Hornet was detained and an examination made of the facts in connection with her alleged voyage. It was finally decided that the evidence was not sufficient to hold her, and she was released. She afterward, in December, 1870, sailed from New York "for Saint Thomas and a market, then to a port or ports that the captain may direct, and back to a port of the United States, not exceeding six months."

She went to Nassau, afterward to Port au Prince; then to Aspinwall, where it is alleged that a filibustering expedition against Cuba went on board of her, which expedition was afterward landed on the coast of Cuba. She then went to Port au Prince, where she was, as it were, blockaded by the Spanish gunboats for several months.

In January last the Government of the United States sent a man-of-war to Port au Prince to bring her back to the United States, where, upon her arrival, proceedings were taken for punishing any violation of the neutrality laws of the United States.

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R. HOAR,
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October 6, 1870.

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